

No. 12532

2639

United States
Court of Appeals
for the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

POTLATCH FORESTS, INC.,
Respondent.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

FILED

JUL 24 1950

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

H. J. MERRICK,

Seattle, Washington,

For the General Counsel.

HARRY GEORGE, JR.,

600 Henry Bldg., Portland, Oregon.

ALBERT HARTUNG,

418 Governor Bldg., Portland, Oregon.

For the International Woodworkers of
America, C.I.O., Local Union 10-364.

R. N. ELDER,

Coeur d'Alene, Idaho.

GEORGE W. BEARDMORE,

Lewiston, Idaho,

For Potlatch Forests, Inc., Respondent.

United States of America, Before the National
Labor Relations Board, Nineteenth Region

Case No. 19-CA-166

In the Matter of
POTLATCH FORESTS, INC.
and
INTERNATIONAL WOODWORKERS OF
AMERICA, LOCAL 10-364, C.I.O.

COMPLAINT

It having been charged by International Woodworkers of America, Local 10-364, C.I.O., Lewiston, Idaho, that Potlatch Forests, Inc., Lewiston, Idaho, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the Regional Director for the Nineteenth Region, designated by the Board's Rules and Regulations, Series 5, as amended, Section 203.15, hereby issues this Complaint and alleges as follows:

I.

Potlatch Forests, Inc., hereinafter called Respondent, is and has been since 1931, a corporation duly organized under and existing by virtue of the laws of the State of Maine, and has its principle office and place of business in Lewiston, Idaho.

II.

Respondent is engaged in felling timber and manufacturing lumber and lumber products from its logs, in which latter operation it operates sawmills and manufacturing plants at Lewiston, Potlatch and Coeur d'Alene, Idaho. The value of the products manufactured by Respondent annually at its aforesaid plants is in excess of \$1,000,000, which products are sold and shipped by Respondent from its said plants to customers in various States of the United States.

III.

Respondent is engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

IV.

International Woodworkers of America, Local 10-364, C.I.O., herein called Local 10-364, and its parent organization, International Woodworkers of America, C.I.O., herein called International, are unincorporated associations and are labor organizations within the meaning of Section 2, subsection (5) of the Act. On or about March 4, 1944, the Board certified International as the bargaining agent for the employees in Respondent's sawmills and manufacturing plants and its wood operations, and since said date International and Local 10-364 have functioned as bargaining agents of Respondent's employees working at its Clearwater plant.

V.

On or about August 7, 1947, International called

a strike of Respondent's employees for the purpose of securing a wage increase, and as a result Respondent closed down all of its operations. In early September, 1947, Respondent resumed the operation of its sawmills and manufacturing plants behind the picket lines of International, and by October 1, 1947, a substantial number of employees had returned to work despite the strike and a substantial number of new employees had also been hired by Respondent.

VI.

On or about October 12, 1947, International and Respondent executed an agreement in writing terminating the strike, whereby it was agreed that the wages of the employees were to remain at the same rate as before the strike and that all of the employees of Respondent still out on strike were to return to work thereafter without discrimination. Thereupon the strike ceased, the pickets were withdrawn, and a substantial number of the striking employees returned to their jobs with Respondent at their pre-strike wage.

VII.

At and after termination of the strike as aforesaid, Respondent inaugurated a so-called "Return-to-Work Policy" which provided that if and when there was a curtailment of Respondent's operations, the striking employees of Respondent who returned to work after the date of the strike settlement agreement aforesaid, were to be laid off or transferred to lower-rated jobs before the employees who

had returned to work or had been hired during the strike. Respondent currently maintains and gives effect to said policy at the date hereof, and has prepared and maintains revised seniority lists for purposes of laying off employees based on said policy, giving retention preference in event of curtailment of operations to those employees who had returned to work or had been hired during the strike of 1947 over those who had returned after the strike settlement.

VIII.

In late December, 1948, and early January, 1949, a temporary curtailment and reduction of personnel in some Departments at the Clearwater plant was necessitated by weather conditions, lack of incoming lumber and lack of box factory orders. This curtailment and reduction of personnel was handled by Respondent in accordance with Respondent's "Return-to-Work Policy" aforesaid in determining which employees should be retained and who should be laid off. The curtailment and reduction of personnel affected approximately forty-five employees, among them Gail Cloninger and Claude Walters, members of Local 10-364, who had gone out on strike on August 7, 1947, and had returned to their jobs with Respondent on October 13, 1947, after the strike settlement.

IX.

In giving effect to its "Return-to-Work Policy" described in paragraph VII, during the time and circumstances described in paragraph VIII, Re-

spondent suspended from employment and replaced with others the following employees for the periods specified:

1. Gail Cloninger, from December, 30, 1948, to January 6, 1949, when Respondent reinstated him.
2. Claude Walters, from January 21, 1949, to March 10, 1949, when Respondent reinstated him.

X.

By inaugurating, maintaining and giving effect to its "Return-to-Work Policy" aforesaid, and by laying off and replacing said Cloninger and Walters, as set forth and described in paragraphs VII to IX, inclusive, above, Respondent has discriminated and is now discriminating against its employees, including said Cloninger and Walters, in regard to hire and tenure of employment and the terms and conditions of employment, and by such discrimination has discouraged and is now discouraging membership in International and in Local 10-364, and thereby has engaged in and is now engaging in, unfair labor practices within the meaning of Section 8 (a), subsection (3) of the Act.

XI.

By all of the acts of Respondent set forth and described in paragraphs VII to IX, inclusive, above, and by each of said acts, Respondent has interfered with, restrained and coerced, and is interfering,

restraining and coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the Act, and by all of said acts and by each of them, Respondent has engaged in, and is now engaging in unfair labor practices within the meaning of Section 8 (a), subsection (1) of the Act.

XII.

The acts and conduct of Respondent as set forth in paragraphs VII to IX, inclusive, above, occurring in connection with the operations of Respondent as described in paragraphs I, II and III above, have a close, intimate and substantial relationship to trade, traffic and commerce among the several states of the United States and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XIII.

The acts and conduct of Respondent as hereinabove set forth, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a), subsections (3) and (1), and Section 2, subsection (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board,

acting by and through the Regional Director for the Nineteenth Region of the Board, on this 24th day of June, 1949, issues this Complaint against Potlatch Forests, Inc., the respondent herein.

/s/ THOMAS P. GRAHAM, JR.,
Regional Director, Nineteenth Region, National
Labor Relations Board.

[Title of Board and Cause.]

ANSWER

Comes now Potlatch Forests, Inc., the Respondent herein, and in answer to the Complaint filed herein alleges:

I.

The Respondent, Potlatch Forests, Inc., admits paragraph One of the Complaint.

II.

The Respondent, Potlatch Forests, Inc., admits paragraph Two of the Complaint and further answering said paragraph alleges that in addition to the saw mills and manufacturing plants set forth in paragraph Two of the Complaint, the Respondent also has two logging operations, one at Headquarters, Idaho, and vicinity; and the other at Bovill, Idaho, and vicinity, and that all five operations are within the single bargaining unit.

III.

That the Respondent, Potlatch Forests, Inc., admits paragraph Three of the Complaint.

IV.

Answering paragraph Four of the Complaint, Respondent admits that the International Woodworkers of America, Local 10-364, C.I.O., herein called Local 10-364, and its parent organization, International Woodworkers of America, C.I.O., herein called International, are unincorporated organizations and are labor organizations within the meaning of Section 2, Sub-section 5 of the Act. Admits that on March 4, 1944, the Board certified the International as the bargaining agent for the employees in Respondent's saw mills and manufacturing plants and its woods operations. Respondent denies that the International and Local 10-364 has functioned as bargaining agents of Respondent's employees at its Clearwater Plant since said date.

As further answer Respondent alleges that said International has, at all times since March 4, 1944, had Locals 10-119, 10-358, 10-361 and 10-364 affiliated with it with members among the employees in the bargaining unit of the Respondent and International and said Locals have been and now are recognized as the bargaining agent. That International and Locals 10-361, 10-364, 10-358 and 10-119 have not complied with the National Labor Relations Act, as amended, and particularly Section 9

(f), (g) and (h), and that they are not now in compliance.

V.

In answer to paragraph Five of the Complaint, the Respondent, Potlatch Forests, Inc., denies that on or about August 7, 1947, International called a strike of Respondent's employees for the purpose of securing a wage increase, or that as a result of said strike it closed down all of its operations or resumed the operation of its saw mills and manufacturing plants behind the picket lines of International in early September, 1947. That the Respondent admits that by October 1, 1947, a substantial number of employees had returned to work despite the strike, but denies a substantial number of new employees had also been hired by Respondent.

That the Respondent, Potlatch Forests, Inc., as a further answer to paragraph Five of the Complaint alleges that on or about August 7, 1947, the International Union and Local Unions 10-119, 10-358, 10-361, and 10-364, called an economic strike of Respondent's employees for the purpose of securing a wage increase. That the employees quit work and left their jobs, and as a result thereof, all of the operations of the Respondent, Potlatch Forests, Inc., both in the saw mill and manufacturing plants and the logging operations ceased. That on August 29, 1947, employees commenced returning to work and on October 10, 1947, seventeen-hundred, sixty-seven (1767) employees were working in the operations of the Respondent, Potlatch Forests, Inc.

VI.

In answer to paragraph Six of the Complaint, the Respondent, Potlatch Forests, Inc., denies that on or about October 12, 1947, or any time, International and the Respondent executed an agreement in writing terminating the strike, or whereby it was agreed that the wages of the employees were to remain at the same rate as before the strike or that all of the employees of Respondent still out on strike were to return to work thereafter without discrimination or that by reason thereof the strike ceased or that the pickets were withdrawn or that a substantial number of the striking employees returned to their jobs with Respondent at their pre-strike wage, or at any wage.

As a further answer to paragraph Six of the Complaint, the Respondent, the Potlatch Forests, Inc., alleges that on or about October 7, 1947, officers of the International met in negotiation with the General Manager and Assistant General Manager of the Respondent, the Potlatch Forests, Inc., seeking a settlement and termination of said strike. The officers of International were advised at said meeting by the officers of the Respondent, Potlatch Forests, Inc., that the employees who had returned to work would not be displaced by employees returning to work after the strike settlement. That, thereafter and on October 9, 1947, two other officers of said International met with the officers of the Respondent, the Potlatch Forests, Inc., and again discussed a settlement of the strike. As a result of said meeting and on October 10, 1947,

the officers of International presented to the officers of the Respondent a memorandum as a basis for a proposed settlement, which memorandum among other things included the statement that all former employees of the Respondent, "will return to work without discrimination or loss of seniority on Monday, October 13." The officers of the Respondent advised the officers of the International that the memorandum was not satisfactory because it contained the words, "without loss of seniority," it having been agreed by the officers of the International and the officers of the Potlatch Forests, Inc., that employees who did return after the strike settlement would in no instance displace an employee who had returned to work prior to said settlement and that, therefore, the seniority of the employees returning after the strike settlement could not be protected. It being so agreed by the officers of International and the officers of the Respondent the words, "without loss of seniority," were stricken from the memorandum by the union. That after said deletion and on October 12, 1947, the officers of International and the officers of Respondent initialed a memorandum of proposed settlement, and agreed that employees who did return to work after the strike settlement would in no instance displace an employee who had returned to work prior to said settlement. That thereafter on October 13, 1947, the pickets were withdrawn from all of the operations of the respondent and all employees who desired to return to work returned

without discrimination and in keeping with the strike settlement.

VII.

The Respondent, Potlatch Forests, Inc., denies that at or after the termination of the strike, the Respondent inaugurated a so-called "return-to-work policy" which provided that if and when there was a curtailment of Respondent's operations, the striking employees of Respondent who returned to work after the date of the strike settlement agreement were to be laid off or transferred to lower rated jobs prior to the employees who had returned to work or had been hired prior to the date of said strike settlement agreement. That the Respondent denies that it currently maintains and gives effect to said policy at the date hereof, or that it has prepared and maintains revised seniority lists for purposes of laying off employees based on said policy or for giving retention preference in event of curtailment of operations to those employees who had returned to work or had been hired during the strike of 1947 over those who had returned after the strike settlement or for any other purpose.

In further answer to paragraph 7 of the Complaint, the Respondent alleges that after October 12, 1947, in accordance with the understanding and agreement between the officers of the International and the officers of the Respondent in reaching a settlement of said strike, the Respondent established a "return-to-work policy" which among other things provides that in the event of a curtailment the em-

ployees who returned after the strike settlement could in no instance displace an employee who had returned to work or hired prior to the settlement

VIII.

That the Respondent, the Potlatch Forests, Inc., admits paragraph Eight of the Complaint except that the Respondent denies that it has any knowledge or information sufficient to form a belief as to whether Gail Cloninger and Claude Walters are members of the I.W.A., C.I.O. Local 10-364, and, therefore, denies the same.

IX.

In answer to paragraph Nine of the Complaint, the Respondent denies that in giving effect to its return-to-work policy described in paragraph Seven of the Complaint or during the time and circumstances described in paragraph Eight that it suspended from employment and replaced with others the following employees for the period specified, to wit:

1. Gail Cloninger, from December 30, 1948, to January 6, 1949, when Respondent reinstated him.
2. Claude Walters, from January 21, 1949, to March 10, 1949, when Respondent reinstated him.

As a further answer to paragraph Nine of the Complaint, the Respondent alleges that Gail Cloninger on or about December 30, 1948, was a common

laborer receiving the minimum rate of pay and that he lost three shifts of employment, to wit: January 3, 4, and 5, 1949, due to adverse weather conditions. That Claude Walters was on or about January 18, 1949, a common laborer receiving the minimum rate of pay. That on January 22, 1949, he refused to work on a common labor job in the plant of the Respondent. On March 10, 1949, he accepted a job as common laborer in the plant of the Respondent, that the loss of time of the said Walters between January 22, 1949, and March 10, 1949, was due entirely to his refusal to work on common laborer jobs.

X.

In answer to paragraph Ten of the Complaint, the Respondent denies that by inaugurating, maintaining or giving effect to its return-to-work policy or by laying off or replacing said Cloninger or Walters as set forth in paragraphs Seven and Nine of the Complaint discriminated or is now discriminating against its employees or the said Cloninger or Walters in regard to hire or tenure of employment or the terms and conditions of employment or by such discrimination has discouraged or is now discouraging membership in International or Local 10-364 or any Local or thereby has engaged in or is now engaging in unfair labor practices within the meaning of Section 8 (a), Subsection (3) of the Act.

XI.

In answer to paragraph Eleven of the Complaint the Respondent denies that it has interfered with,

restrained or coerced or is interfering, restraining or coercing its employees in the exercise of their rights to self-organization or to form, or join or assist labor organizations or to bargain collectively through representatives of their own choosing or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act and Respondent denies that it has engaged in or is engaging in unfair labor practices within the meaning of Section 8 (a) Subsection 1 of the Act.

XII.

In answer to paragraph Twelve of the Complaint, the Respondent denies that its acts or conduct in connection with the operations of Respondent have a close intimate or substantial relationship to trade, traffic or commerce among the several states of the United States or has led to or tend to lead to labor disputes, burdening or obstructing commerce or the free flow of commerce except that the Respondent admits that it is engaged in traffic and commerce among the several states of the United States.

XIII.

In answer to paragraph Thirteen of the Complaint, the Respondent denies that its acts or conduct constitute unfair labor practices affecting commerce within the meaning of Section 8 Subsections (3) or (1) or Section 2, Subsections (6) or (7) of the Act.

As a first affirmative defense, the Respondent, Potlatch Forests, Inc., alleges:

I.

That the International has not fully complied and is not now in compliance with the National Labor Relations Act, as amended, and particularly Section 9 (f), (g) and (h). That said International and each of its agents and local unions, namely, Locals 10-119, 10-358, 10-361 and 10-364, having members among the employees in the bargaining unit of the Respondent, are not qualified to use the processes of the National Labor Relations Board by reason of their failure to comply with the provisions of the National Labor Relations Act, as amended.

II.

That the Complaint does not state facts sufficient to constitute a cause of Complaint for the reason that it fails to allege that International and its Locals have complied with provisions of the National Labor Relations Act, as amended.

As a second affirmative defense the Respondent alleges:

I.

The proceedings herein are barred by the Statute of Limitations Section 10 (b) of the National Labor Relations Act as amended as shown on the fact of the Complaint.

As a third affirmative defense the Respondent alleges:

I.

That there is no collective bargaining agreement covering seniority existing between the International, its Local and this Respondent, and for that reason the National Labor Relations Board has no jurisdiction to enter any order affecting seniority of Respondent's employees.

As a fourth affirmative defense the Respondent alleges:

I.

That the Respondent has many other and varied defenses not specifically herein set forth the nature of which will be shown at the trial of the cause herein.

Dated this Sixth day of July, 1949, at Lewiston, Idaho.

/s/ GEORGE W. BEARDMORE,
ELDER, ELDER & SMITH.

/s/ R. N. ELDER,

/s/ ROBERT H. ELDER,

/s/ SIDNEY E. SMITH,

Attorneys for Potlatch
Forests, Inc., Respondent.

State of Idaho

County of Nez Perce—ss.

H. L. Torsen, first being duly sworn on oath, deposes and says that he is the Treasurer of the Potlatch Forests, Inc., the above-named Respondent, and is authorized as such officer to make this verification for and on behalf of said Respondent, that he has read the foregoing answers, knows the contents thereof, and believes the statements made therein to be true.

/s/ H. L. TORSEN.

Subscribed and sworn to before me this sixth day of July, 1949.

[Seal] /s/ R. F. HANSEN,

Notary Public in and for the State of Idaho, Residing at Lewiston, Idaho.

Recived July 8, 1949.

[Title of Board and Cause.]

MOTION TO DISMISS

Comes now Potlatch Forests, Inc., Respondent herein, and files this Motion to Dismiss the Complaint for the reason and upon the grounds that the International Woodworkers of America, C.I.O., has not fully complied and is not now in full compliance with the National Labor Relations Act, as amended, and particularly Section 9 (f), (g) and (h). That said International Union and each of

its agents and local unions, namely, Locals 10-119, 10-358, 10-361 and 10-364, having members among the employees in the bargaining unit of the Respondent, are disqualified, due to said non-compliance, from using the processes of the National Labor Relations Board.

The complaint filed herein should be dismissed for the further reason that it appears from the Complaint the proceedings are barred by the Statute of Limitations, being Section 10 (b) of said National Labor Relations Act.

The Complaint filed herein should be dismissed for the further reason that it does not set forth facts sufficient to state an unfair labor practice within the meaning of Section 8 (a), Subsections (3) and (1) of said Act.

This motion is made and based upon the records and files herein and the records and files of the National Labor Relations Board and the Secretary of Labor of the United States of America.

Dated this sixth day of July, 1949, at Lewiston, Idaho.

/s/ GEORGE W. BEARDMORE.

/s/ R. N. ELDER,

/s/ ROBERT H. ELDER,

/s/ SIDNEY E. SMITH,

Attorneys for Potlatch
Forests, Inc., Respondent.

Received July 8, 1949.

[Title of Board and Cause.]

MR. HERBERT J. MERRICK,

For the General Counsel.

ELDER, ELDER & SMITH, by

MR. R. N. ELDER,

Of Coeur d'Alene, Idaho, and

MR. GEORGE W. BEARDMORE,

Of Lewiston, Idaho,

For the Respondent.

GEORGE AND BABCOCK, by

MR. HARRY GEORGE, JR.,

Of Portland, Ore.,

For the Charging Local.

INTERMEDIATE REPORT

Statement of the Case

Upon a charge filed February 16, 1949, and amended March 18, 1949, by International Woodworkers of America, Local 10-364, C. I. O., herein called the charging local, the General Counsel of the National Labor Relations Board, by the Regional Director for the Nineteenth Region (Seattle, Washington), issued his complaint, dated June 24, 1949, against Potlatch Forests, Inc., Lewiston, Idaho,

herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) of the National Labor Relations Act, as amended June 23, 1947 (Public Law 101, 80th Congress, Chapter 120, 1st Session), herein called the Act.

With respect to the unfair labor practices, the complaint alleged in substance that after the termination by settlement agreement, on October 12, 1947, of an economic strike of the Respondent's employees, the Respondent inaugurated and has since maintained a so-called "Return-to-Work Policy," under which, for purposes of lay-off or transfer to lower-rated jobs in the event of curtailment of operations, employees who returned to work or were hired during the strike are given retention preference rights over employees who returned to work after the date of the strike settlement; that in giving effect to its "Return-to-Work Policy" during a temporary curtailment of operations in some departments of its Clearwater plant, the Respondent laid off and replaced with others Gail Cloninger, for the period from December 30, 1948, to January 6, 1949, and Claude Walters, for the period from January 21, 1949, to March 10, 1949; and that by inaugurating, maintaining, and giving effect to its "Return-to-Work Policy" and by laying off and replacing Cloninger and Walters as aforesaid, the Respondent discriminated against its employees, including Cloninger and Walters, in

violation of Section 8 (a) (3) of the Act, and thereby also engaged in conduct violative of Section 8 (a) (1) of the Act.

In its answer duly filed July 8, 1949, the Respondent in substance denied that it had engaged in the alleged unfair labor practices. In addition, the Respondent alleged affirmatively (1) that there was a failure of proper compliance with the provisions of Section 9 (f), (g), and (h) of the Act; (2) that the unfair labor practices alleged in the complaint are barred by the 6-month limitation proviso of Section 10 (b) of the Act; (3) that the Board is without jurisdiction to enter any order affecting the seniority of the Respondent's employees because of the absence of any collective bargaining agreement covering seniority; and (4) that "the Respondent has many other varied defenses not specifically herein set forth the nature of which will be shown at the trial of the cause herein."

Pursuant to notice, a hearing was held on July 11 and 12, 1949, at Lewiston, Idaho, before the undersigned, Arthur Leff, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the Respondent, and the Union were represented at and participated in the hearing. All parties were afforded opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the opening of the hearing, a number of motions were made by the Respondent, to dismiss the complaint in its entirety, were denied. The mo-

tions were made upon the following alleged grounds: (1) that certain constituent locals of the International Woodworkers of America, having among their members employees of the Respondent in the bargaining unit for which the said International is the certified representative, are disqualified from using the processes of the Board because of non-compliance with the provisions of Section 9 (f), (g), and (h) of the Act;¹ (2) that the 6-month limita-

¹The Respondent has a number of operations in scattered localities. All are grouped in a single company-wide bargaining unit, with the International as the certified bargaining representative for the production and maintenance employees. The International has affiliated with it four locals having members among employees in the bargaining unit—Local 358 at Pierce, Idaho, Local 119 at Coeur d'Alene, Idaho, and Local 364 (the charging local) at Lewiston, Idaho. These locals, jointly with the International, have been parties to the contracts covering employees in the bargaining unit. Cloninger and Walters, the employees alleged in the complaint to have been discriminatorily laid off, were members of the charging local which exercises jurisdiction over the Clearwater operation at Lewiston where they were employed. The General Counsel stated at the hearing—and the Respondent did not dispute—that at the time of the issuance of the complaint both the charging local and its parent International were in full compliance with the requirements of Section 9 (f), (g), and (h). He conceded, however, that two of the remaining three locals, with members among the employees in the bargaining unit at other operations, were not in compliance.

The Respondent contended that the complaint was fatally defective in that compliance was not pleaded. This contention is without merit. The Board has

tion upon the filing of charges operated as a bar to this proceeding; and (3) that the complaint failed to state facts sufficient to establish the commission of any unfair labor practice. Motions were also made by the General Counsel at the opening

held that the question of compliance is a matter for administrative determination; it is not a litigable issue, and need not be pleaded or proved. See, e.g., *Matter of Baldwin Locomotive Works*, 76 N. L. R. B. 922; *Matter of Lion Oil Co.*, 76 N. L. R. B. 565; and *Matter of Pauls Valley Milling Co.*, 82 N. L. R. B., No. 149.

The Respondent contended further that, since this proceeding involves basically the legality of the Respondent's seniority policy as applied throughout the bargaining unit, it is a prerequisite to invocation of the Board's processes that all constituent locals with membership among the employees in the unit be in compliance. Were this a proceeding seeking to establish or otherwise to aid the bargaining position of a labor organization, the Respondent's position might have been well taken. Cf. *Matter of Marshall & Bruce Co.*, 75 N. L. R. B. 90; *Matter of Prudential Insurance Company*, 81 N. L. R. B., No. 16. But it is not. All this proceeding looks toward is a cease and desist order enjoining certain alleged practices that are violative of individual employee rights protected by the Act. The Board's processes for that purpose might properly have been invoked by a charge filed by any interested individual. The right of the charging local to file such a charge on behalf of its affected members was no less, since both it and its International were in compliance. That members of other locals which are not now in compliance may also incidentally derive benefits from an unfair labor practice finding in this case, is immaterial. See, *Matter of United Engineering Co.*, 84 N. L. R. B., No. 10.

of the hearing to strike the several affirmative defenses alleged in the Respondent's answer. The motions were denied, with one exception.² During the hearing, decision was reserved on motions of the General Counsel and the Union to strike certain testimony claimed to be inadmissible under the parol evidence rule. The disposition of these motions is indicated in the Findings of Fact made below. At the close of the case, the Respondent moved to dismiss the complaint upon grounds substantially the same as were asserted by it at the opening of the hearing. To the extent that the motion sought dismissal under Section 9 (f), (g), and (h) and under Section 10 (b), it was denied. To the extent that it sought dismissal upon the ground that the evidence was insufficient to establish an unfair labor practice, ruling was reserved on the motion; and it is now disposed of in the manner indicated in the body of this report. A motion made by the General Counsel at the close of the case, to conform the pleadings to the proof with respect to minor matters, was granted.³ Oppor-

²The General Counsel's motion, to dismiss for indefiniteness and uncertainty the affirmative defense alleging that the Respondent had "other varied defenses not herein specifically set forth," was granted, with leave to the Respondent to apply, if it desired, to have its answer amended so as to allege specifically such other affirmative defenses as it might have.

³After the close of the hearing, an order was entered correcting certain inaccuracies in the transcript of proceedings.

tunity was afforded all parties to argue the issues orally upon the record and to file briefs and proposed findings of fact and conclusions of law. Only the General Counsel availed himself of the opportunity to argue orally. Briefs were received from the charging party and from the Respondent.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

Findings of Fact

I. The Business of the Respondent

Potlatch Forests, Inc., a corporation organized under the laws of the State of Maine, has its principal office and place of business in Lewiston, Idaho. The Respondent is engaged in felling timber and manufacturing lumber and lumber products from its logs. It operates sawmills and manufacturing plants at Lewiston, Potlatch, and Coeur d'Alene, Idaho, in addition to two logging operations, one at Headquarters, Idaho, and vicinity, and the other at Bonvill, Idaho, and vicinity. The value of the products manufactured by the Respondent annually at its aforesaid plants is in excess of \$1,000,000. These products are shipped by the Respondent from its said plants to customers in various States of the United States. The Respondent admits that it is engaged in commerce within the meaning of the Act.

II. The Organization Involved

International Woodworkers of America, Local 10-364, C. I. O., and its parent organization, Inter-

national Woodworkers of America, affiliated with the Congress of Industrial Organizations, are labor organizations admitting to membership employees of the Respondent.

III. The Unfair Labor Practices

A. Background

1. Introduction

Certified by the Board on March 4, 1944, the International Woodworkers of America, herein called the IWA, has since been the recognized exclusive bargaining agent of the Respondent's production and maintenance employees in a bargaining unit embracing the Respondent's five operations. On April 1, 1945, and again on April 1, 1946, collective bargaining agreements, styled Master Working Agreement, were executed by the Respondent, on the one hand, and, on the other, jointly by the IWA and each of its four constituent locals which numbers among its members employees of the Respondent's various operations. The IWA and its four locals, jointly, are referred to in the Master Agreement as the Union, and they will so be referred to in this report.

The Master Working Agreement expressly recognized that the principle of seniority was to govern retention of jobs during any curtailment of operations. Detailed provision was made for the application of that principle. Among other things, it was provided:

All seniority shall be considered first by job classification, second by department, and last by plant. It shall be used as a basis for preference in shift as well as promotion and in event of curtailment or during slack work periods. An employee demoted shall go down through the same route by which he progressed.

Before the strike of August, 1947, referred to below, there were no substantial differences between the Respondent and the Union as to the operation of the seniority system upon a reduction in force. For purposes of this proceeding it is unnecessary to consider in detail just how seniority operated in all its ramifications, particularly with respect to employees in skilled job classifications. Gail Cloninger and Claude Walters, the specific objects of discrimination alleged in the complaint, occupied jobs in the common labor classification. Since theirs was the lowest classification, and all common labor jobs in a given department, regardless of their particular character, are regarded as lying in a pool, the principle of seniority by job classification did not apply as to them. An employee in the common labor classification was, however, entitled to retention rights in his particular department on the basis of his seniority there. And, if his tenure was insufficient to allow him to retain his job in his department, he could exercise his plant seniority to claim retention rights over any similarly classified junior employee in the plan for whose job he was qualified. In no event could such an employee, upon a reduction in

force, be forced out of his department ahead of another employee similarly classified who had less department seniority and less plant seniority and whose job he was capable of filling.

The Master Agreement of April 1, 1946, ran for a term of 1 year. Before its expiration date, negotiations were begun for a new contract. By May 28, 1947, the Respondent and the Union had reached agreement on all disputed points, save the Union's demand for the elimination of an area wage differential. The agreement of the parties was embodied in two written memoranda, dated May 7 and May 28, 1947. These, in substance, set out the parties' interpretation and clarification of certain clauses of the 1946 Master Agreement that had been in dispute; made certain revisions with regard to wages; and provided for an extension of the 1946 Master Agreement, subject to the modifications noted, until April 1, 1948. Left unchanged—except for a minor interpretation not here material—were the seniority provisions of the former agreements. The issue of the wage differential, alone, was left open for future negotiation.

2. The Strike and the Strike Settlement Agreement

Negotiations on the wage differential issue having reached an impasse, the Union on August 7, 1947, called an economic strike of the Respondent's employees. The strike at first resulted in a complete shutdown of all the Respondent's operations. But starting about the end of August, employees began to return to work across the picket lines, and the

Respondent also hired some new employees as replacements for the strikers. By October 10, 1947, some 1,750 employees were working in the bargaining unit, which normally has a complement of about 2,600.

With the strike apparently hopelessly lost, the Union sued for peace. Through an intermediary, an exploratory meeting to discuss settlement was arranged with the Respondent. The meeting, held on October 7, 1947, was attended by General Manager C. L. Billings and Assistant General Manager Otto H. Lauschel, for the Respondent, and by George Brown and Albert Hartung, IWA officials, for the Union. The Respondent's representatives made it clear at the outset that there would be no concession on the matter of the wage differential, and that point apparently was not pressed by the IWA representatives who made no effort to conceal their anxiety to terminate the strike. The subject most broadly discussed, although not the only one, related to the procedures to be followed in getting the strikers back to work; and how replacements and employees who had crossed the picket lines were to be protected in the jobs they were holding at the termination of the strike. No conclusion was reached at that meeting, but the IWA officials agreed to refer the views expressed to those IWA officials who would be authorized to carry on from that point. Thereafter, on October 9, and again on October 10, additional meetings were held. At these, the Respondent was represented by the same negotiators, and the Union by Walter Botkin and

Jodie Eggers, of the IWA Regional Negotiating Committee. Botkin and Eggers made clear at the outset of the meetings that they were merely acting for the Regional Committee, and that any agreement reached by them would be merely tentative until approved by the union membership. In general the same matters were discussed at these meetings as at the October 7 meeting. During the discussions the points upon which the parties appeared to be in agreement were reduced to writing, and drafting revisions were made. In the end, the negotiators settled upon a written form of memorandum embodying five points upon which the negotiators had agreed as a basis for strike settlement to be submitted to the union membership for approval. The memorandum, which was not signed or initialed at that time, read as follows:

As a basis for settlement of the present dispute between the IWA and the Potlatch Forests, Inc., the following is proposed.

1. The Union agrees to withdraw its demands for a $7\frac{1}{2}$ wage increase to eliminate the differential. Wages to remain at rates as of August 6, 1947. Picket lines to be withdrawn as of October 13, 1947.

2. All former employees at Potlatch Forests, Inc., will return to work without discrimination, on Monday, October 13th. Former employees shall return to work by October 22, to protect their job rights. In the event the job

formerly held by the returning employee is not open, the employee will be given other work and receive pay on the basis of the rate paid on his former job.

3. Men previously on gypo basis will be assigned to gypo work if still available. If gypo work is not available, pay will be at the rate shown in wage schedule for the job.

4. The Company has informed the Union that the night shift of the box factory in the Clearwater Mill cannot be started at this time, due to business conditions, and for that reason it may not be able to employ all of the former box factory workers immediately. These box factory workers will be given preference over new employees in filling vacancies in other departments.

5. The present contract will remain in effect without change except that the following is substituted for the 4th paragraph in Article VII.

As a condition of continued employment, every employee who confirms to the Company his membership in the Union as of November 20, 1947, or becomes a member of the Union after November 20, 1947, shall be required to maintain his membership in good standing.

On October 11, the strike settlement proposal in the form set out above was submitted to membership meetings of the several locals involved, was voted on by the membership, and was approved. On Oc-

tober 12, Botkin again met with the Respondent's negotiators. At that time the strike settlement memorandum, in the precise form set out above, was dated and initialed by Botkin for the Union, and by Billings and Lauschel for the Respondent.

On October 13, 1947, in compliance with the strike settlement agreement, the Union terminated the strike and withdrew its pickets.

3. The inauguration by the Respondent of its "Return-to-Work Policy," with "strike seniority."

Shortly after the strike settlement agreement was signed, a group of higher management officials, including Lauschel, determined upon and drafted a so-called "Return-to-Work Policy." According to the testimony of Clearwater Manager David S. Troy, a member of this group, the strike settlement agreement, as it was interpreted by Management, was used as the basis for formulating the Policy. The purpose of the Policy, according to the Respondents' witnesses, was to provide a guide for the uniform interpretation and application of the settlement terms by management officials at the Respondent's various plants. The text of the Policy, to the extent applicable to the issues of this case, is set forth below:

Potlatch Forests, Inc.—Return to Work Policy

Employees who returned to work October 13th to 22nd, inclusive, 1947, will, in case of

curtailment, be laid off ahead of employees who returned to work or were hired on or before October 12, 1947 (settlement date). The order of layoff in each group will be based on each person's previous seniority rights.

Employees who return to work on or before October 12, 1947, re-established their previous seniority for all purposes. Employees who returned to work October 13 to October 22, inclusive, 1947, re-established their previous seniority for purposes of curtailment as among this group (returning October 13 to 22, incl.), and for training and promotion among all groups.

Employees who returned to work on or before October 22, 1947, but whose jobs had been filled while they were on strike will be given an opportunity to return to their old jobs at the first opening occurring. If this opportunity is passed up, then the employee's rate will revert to the rate of the job he holds and he will have no further right to return to his old job.

* * *

Employees who returned to work on or before October 22, 1947, will retain all previous seniority rights for purposes of training and promotion.

Former employees who returned to work after October 22, 1947, will be classed as new employees.

The aspect of the "Return-to-Work Policy" most pertinent here is the division of the Respondent's employees, for purposes of determining seniority upon a reduction in force, into two classes—one, composed of those who had crossed the Union's picket lines during the strike; the other, made up of those who remained out on strike during its entire course. Employees in the first class were granted the benefit of a form of super seniority—later styled by the Respondent as "strike seniority." Employees in the second class suffered, concomitantly, an impairment of their pre-strike relative job retention rights in the bargaining unit considered as a whole.

It was stipulated by the Respondent that since the termination of the strike it has continued to maintain and give effect to the seniority principles set out in its "Return-to-Work Policy."

It has already been noted that the "Return-to-Work Policy" was drafted by officials of the Respondent without consulting the Union. After it was drafted, it was neither submitted to any union official, nor was it printed or otherwise generally publicized among the employees in the Respondent's plants. Employees were made aware of "strike seniority" only when they as individuals inquired concerning their own relative seniority status. It was not until June, 1949, that the union officials were shown for the first time a copy of the "Return-to-Work Policy."⁴

⁴In June, 1949, the Policy in its written form was brought officially to the Union's attention by a con-

But that is not to say that in the interim the Union was unaware that the Respondent was maintaining a policy of according to employees who had worked during the strike preferential treatment at variance with the seniority provisions of the Master Agreement. Notice to that effect, at least in a general way, was brought home to the Union long before the layoffs of Cloninger and Walters. Thus, shortly after the termination of the strike, grievances charging impairment of seniority rights were filed on behalf of a number of the Respondent's railroad employees who had remained out through the entire course of the strike.⁵ During the process-

ciliator who was seeking to resolve the parties' differences in their negotiations for a new contract. The negotiations had bogged down, it seems largely as a result of the Respondent's insistence and the Union's refusal to include a "super-seniority" provision giving preference to employees who had worked during the 1947 strike.

⁵The nature of these grievances was not fully developed on the record, and it is difficult to tell with any certainty precisely what was involved. It would appear, however, from the grievance complaint forms which are in evidence, that none of the grievances concerned a question of retention rights upon reduction of force. The grievances appear to have involved, rather, the issue of whether certain strikers were entitled upon their return to specific jobs or rates of pay; it being claimed in some cases that the grieving employees were denied their former job or jobs to which their seniority entitled them, although such jobs were not actually filled by others at the conclusion of the strike. It seems, although the record is also somewhat deficient in this regard, that the Respondent defended

ing of these proceedings it was indicated to union officials, by statements of company representatives as well as through other sources, that the Respondent was interpreting the strike settlement agreement as granting, at least for certain purposes, preferential seniority treatment to those employees who had returned before the strike settlement date. The Respondent's interpretation, it seems, was based in part upon what it considered to be an oral or implied understanding reached by the negotiators of the strike settlement agreement. The nature of the alleged oral understanding will be considered at some length in a subsequent section of this report. It need only be observed here that during the railroad grievances, the Union took issue with the Respondent's position, denying then, as it does now, that any agreement or understanding, oral or otherwise, had ever been reached by the negotiators to vary the seniority provisions of the contract.

these particular grievances mainly upon the ground that the actions complained of were warranted by the replacement provisions of the settlement agreement. The railroad grievances were carried to the highest level of the grievance procedure where the Union finally, but under protest, acquiesced in the Respondent's position. It is the Union's position that it acquiesced only because its only other available remedy was to strike, and this it was not in a position to do at that time. Although, according to the Union, it regarded the Respondent's action against the railroad employees as discriminatory, it decided against filing an unfair labor practice charge at the time, because there was then pending a petition filed by a rival union raising a question of representation which the Union was anxious to have speedily resolved.

The question, whether seniority was to be interpreted in a manner different from the provisions of the last Master Agreement, arose again following the conclusion of negotiations for a new contract in the spring of 1948. No issue apparently was raised during the negotiations with regard to the seniority provisions of the former contract. After the negotiations had resulted in agreement upon all points in issue, a "recommended" agreement, dated April 13, 1948, was signed by the negotiating parties, detailing the agreed upon modifications, amendments, and interpretations to the former contract. In accordance with the usual practice, the agreement of April 13, 1948, was then submitted to the union membership, and was ratified. It was understood that after ratification a new Master Agreement was to be drawn by the Respondent to include the provisions of the last one, as modified by the various written memoranda of agreement that had been signed since. When the new Master Agreement was typed by the Respondent, it included a clause reading, "The strike settlement of October 12, 1947, shall control the application of the seniority article." Taking the position that no mention had been made in the negotiations concerning this clause, the Union refused to sign the Master Agreement in that form. But although no Master Agreement was signed, the record is clear, and it is found, contrary to the position of the Respondent's counsel, that the last Master Agreement, as modified by the several agreements hereinabove referred

to, was in fact extended in its operative effect until April 1, 1949.⁶

B. The Lay-offs of Cloninger and Walters

1. Gail Cloninger

Hired on July 24, 1940, Gail Cloninger thereafter worked without break for the Respondent, principally in its box factory, until his induction in the military service on December 31, 1941. On August 19, 1943, after his military discharge, he was rehired with veterans reemployment rights. On September 3, 1946, he was transferred to the carpenter crew of the Clearwater maintenance department, where, classified as a common laborer, he worked continuously until the strike of August 7, 1947. Cloninger remained out on strike until after its settlement date, returning on October 13, 1947. Upon his return he was reassigned to work as a

⁶This finding is convincingly established by the following: (1) The record clearly shows that the parties dealt with each other on that basis; (2) Charles J. Commerford, Clearwater's personnel director until July 1, 1949, so testified; (3) The Master Agreement provides for 60 days' notice prior to the April 1 expiration date of a change of terms. On January 28, 1949, the Respondent notified the Union of its desire "to negotiate a written agreement based on the Master Agreement effective April 1, 1946, as modified by the subsequent agreements of May 7 and 28, 1947, October 12, 1947, and April 13, 1948, incorporating in one agreement the various interpretations, clarifications, and amendments which have never been combined in a single signed agreement."

truck driver's helper on the carpenter's crew, the very job on which he had been working immediately before the strike.

On December 30, 1948, the Respondent, due to adverse weather conditions, found it necessary to curtail operations in its Clearwater maintenance department, and a number of employees, including Cloninger, were laid off from their jobs in that department. During Cloninger's absence from the maintenance department, Dale Cox filled his place as truck driver's helper on the carpenter's crew. Cox was first employed by the Respondent on November 13, 1946, worked in the box factory until June 5, 1947, then was transferred to the carpenter's crew in the maintenance department, and worked there until the strike on August 7, 1947. Returning to work on October 1, 1947, while the strike was in progress, Cox was given a job in the sawmill, and remained there until December 15, 1947, when he was again transferred to the carpenter's crew.

The Respondent's witnesses conceded that under the Respondent's prestrike interpretation of the applicable seniority provisions, Cloninger's seniority, both in the maintenance department and in the plant, would have been considered greater than that of Cox; that Cloninger would have had prior retention rights in the department upon a curtailment of operations; and that he could not have been replaced by Cox in a situation such as this. The reason Cox was retained in the department in preference to Cloninger, according to the testimony of

Clearwater Personnel Director William Green, was because Cox had returned to work through the picket line, and, on the basis of the Respondent's post-strike seniority interpretations, was consequently entitled to "strike seniority."

After his lay-off from the maintenance department, Cloninger filed a grievance protesting the action taken against him as being at variance with his seniority rights. The Respondent defended on the ground that Cloninger had no "strike seniority." The grievance was carried by the Union to the highest step of the grievance procedure, short of conciliation. The Union agreed at that level that Cloninger be put back to work under the Respondent's interpretation of the seniority provisions, but it expressly noted on the grievance settlement that it was not agreeing by its action in Cloninger's case to any over-all settlement recognizing the validity of the Respondent's seniority interpretation. IWA Organizer Frank E. Gordon testified that the Union did not carry the grievance to the final procedural level of conciliation, because it felt nothing would be gained by that step, because it did not care to strike on the issue, and because it considered that the issue had best be resolved through unfair labor practices charges to be filed with the Board. It was Gordon's further uncontradicted testimony that the Respondent was so informed at the time of the disposition of the Cloninger grievance.

Upon receipt of his lay-off notice, Cloninger, in accordance with the Respondent's usual practice,

was referred to the employment office for possible reassignment. On that day he was offered a job, also in the common labor classification, in another department, to begin on January 2, 1949. Cloninger declined to accept this job immediately, because he desired first to process his grievance. On January 4, 1949, he did accept a job in the cut-up department, and went to work on January 6. On February 15, 1949, he was retransferred to the carpenter's crew of the maintenance department. No back pay is claimed for Cloninger.

2. Claude A. Walters

Claude A. Walters, whose jobs with the Respondent were in the common labor classification, went to work in the unstacker department on May 17, 1944, and, except for two temporary assignments each of 2 days' duration, worked continuously in that department until the time of the strike. He remained out on strike during its entire length, returning on October 13, 1947. Upon his return, he was given his former job in the unstacker department, and remained there until January 18, 1949, when, as a result of a curtailment of operations necessitated by economic considerations, he was given a lay-off notice, along with others. At the time of his lay-off, Walters was informed by his foreman that he would have retained his job in the department had he come back to work only 1 day before the termination of the strike.

Paul Slater was one of the common laborers who

was retained during the curtailment in this department. Slater, whose service in the plant dated from January 15, 1946, and in the unstacker department from May 9, 1947, had gone on strike with the other employees on August 7, 1947, but had returned to work in the unstacker department on September 9, 1947, before the strike had run its course. The Respondent conceded that Walters could have performed the clean-up work to which Slater was assigned during the period of curtailment. And it is not disputed that under the Respondent's prestrike interpretation of the applicable seniority principles, Walters, on the basis of his service in the department and in the plant, would have had preferred retention rights over Slater in the department. The reason for retaining Slater while laying off Walters, it was conceded, was because Slater, unlike Walters, had "strike seniority."

On January 20, 1949, before his lay-off in the replant department, Walters was offered a watchman's job carrying the common labor rate of pay. Walters refused the watchman's job, stating then, as he also did at the hearing, that his feet and ankles could not stand the walking involved. It appears, however, that Walters' job in the unstacker department also required him to be constantly on his feet. On January 27, 1949, Walters was offered a box picking job in the replant department on the night shift, paying a common labor rate plus a night shift differential. But he declined that job also, because, he said, it involved night work and he would have transportation difficulties in getting to the plant. It appears, however, that in the unstacker depart-

ment Walters had worked during alternate months at nights. And the record further shows conclusively that there was a bus running between a point close to Walters' home and the plant, with schedules timed to coincide with the night shift hours. On March 2, 1949, Walters called at the employment office, and was offered a job in the unstacker department on the 3 a.m. to 11 a.m. shift. He refused this job, too, for the reason (in this instance apparently justified) that it would entail transportation problems. At that time, he asked for a job tending lawns, but none was available. The following week, Walters was offered, and accepted, a common laborer's job in the dock department. He remained on that job until March 21, 1949, when he was reassigned to the unstacker department. In the case of Walters back pay is claimed for the period from January 22 to March 10, 1949. That claim is disposed of in the section below, entitled "The remedy."

No formal grievance was filed by Walters or on his behalf. Walters, however, discussed the situation with the IWA organizer, Frank Gordon, who in turn took up the matter informally with Personnel Director Commerford. After Commerford advised Gordon of the job offers Walters had turned down, Gordon did not press the matter further. According to Gordon's testimony, he felt the better procedure would be to add Walters' name to the unfair labor practice charge which the Union was then preparing to file.

3. Factual analysis of the Respondent's contention that the Union agreed to "strike seniority" as part of the strike settlement.

The Respondent asserts that in applying "strike seniority" in the lay-offs of Cloninger and Walters, it was doing no more than conforming to the terms of the 1947 strike settlement agreement. With that assertion, the General Counsel and the Union take sharp issue.

It is clear, of course, that the five-point strike settlement memorandum of October 12, 1947, cannot be relied upon to support the Respondent's position. Not only does the memorandum omit all reference to "strike seniority" (in the sense covered by the opening paragraph of the "Return-to-Work Policy"), but it contains a number of express provisions that appear patently inconsistent with that principle. Among the express terms of the memorandum that are in competition with "strike seniority," are (a) the provision that former employees are to return "without discrimination"; (b) the provision that those who return by October 22 will "protect their job rights"; and (c) the provision that, save for the union security clause, "the present contract (including it must be assumed its seniority provisions) will remain in effect without change."⁷

⁷In only one situation does the memorandum make express provision for the impairment of job rights of a striker returning after the strike settlement date and before the October 22 cut-off date—and that is where his former job is no longer open.

But in pressing its contention, the Respondent does not rely, except possibly in part, upon the terms of the written memorandum. It takes the position that the written memorandum expressed only partially the agreement of the parties; that there was in addition a supplementary verbal understanding providing in effect for "strike seniority." The Union denies that any such supplementary understanding was reached. To support its claim the Respondent rests upon the testimony of Otto Lauschel, one of its negotiators, at the strike settlement.

Analysis of Lauschel's testimony on this factual issue reveals the following: Although there had been prior discussion concerning reinstatement of returning strikers to jobs which had been filled by others during the strike, the question of seniority, as such, was first brought to the forefront at the meeting of October 10, 1947. It specifically arose in this manner. During the settlement negotiations various drafts of a proposed settlement agreement had been prepared. On October 10, the union negotiators submitted a draft in the precise form later initialed by the parties, except for one clause. There was added to the provision that former employees were to "return to work without discrimination," the clause "and without loss of seniority." The insertion of that clause met with objection from the Respondent's negotiators. They were then principally concerned with protecting men already at work in particular jobs against being displaced from such jobs by returning strikers. Apparently

centering their argument about that point, the Respondent's negotiators protested that the insertion of the clause referring to seniority would not at the conclusion of the strike protect employees already working against displacement by returning strikers in the particular jobs they were then holding. The question of protecting the jobs of replacements upon a further curtailment of operations, to the extent that it was raised at all, came up only as an incident to the main point with which the Respondent was concerned.⁸ The union negotiators, declining to accede to any relinquishment of its striking members' seniority rights, strongly opposed the Respondent's position. After some lengthy discussion of this issue, at which no agreement was reached, the union negotiators retired from the meeting room to consider the matter privately. They returned with the words "and without loss of seniority" stricken from draft.⁹ Asked by the Respondent's represent-

⁸Jodie Eggers, a union negotiator, testified that he could not "recall any mention of curtailment as far as it would affect employees as such." On the basis of all the evidence, however, I am persuaded that the question of curtailment was raised by the Respondent, but only from the point of view indicated above, and not from the point of view of granting employees who had returned during the strike a form of super-seniority generally applicable in cases of curtailment.

⁹Eggers testified that the union negotiators decided in caucus to delete the phrase "without loss they were of the opinion (1) that this phrase conflicted in a sense with the provision in the settlement of seniority" to eliminate confusion, and because

atives why they had deleted the phrase, the union negotiators replied that it was going to be difficult enough to sell the union membership on a strike settlement involving no gain to the strikers, without further complicating settlement by any reference to seniority. The Respondent's negotiators made no response, except to say, "Maybe that is all right too," and to add that it probably was a matter of no importance anyway, since it could not affect anyone until a serious curtailment took place, and no such curtailment was in prospect at that time.

There was no further discussion of the subject, and the matter was allowed to rest at that point. The Respondent's representatives were fully aware at the time that the Union's negotiators were unauthorized to do more than tentatively settle upon terms of an agreement which was to be reduced to written form for submission to and ratification by the union membership before it could become binding upon their principal. Yet they admittedly made no attempt to have inserted in the written memorandum any express reference to "strike seniority."

Lauschel testified that he "assumed" the Union's negotiators had agreed to "strike seniority"; and

ment draft, to which they were prepared to accede, that returning strikers were not to be reinstated to jobs formerly held by them if such jobs had since been filled by others and were no longer open; and (2) that, except in a situation involving the actual replacement, of strikers' seniority rights would in any event be fully protected by the settlement provision continuing in effect the then existing collective bargaining agreement.

that his "assumption" was based entirely upon their conduct in striking "and without loss of seniority" from the draft. He admitted, however, that at no time during the course of the negotiations or thereafter, had the union negotiators expressed in words their agreement with the Respondent's position on "strike seniority." Asked by the Respondent's counsel why, if there was such an agreement, no affirmative mention was made of it in the memorandum, Lauschel replied:

They (the Union's negotiators) didn't want it in there. * * * Because they said they couldn't sell that type of a thing to their membership, they would rather not have anything said about seniority to complicate the settlement of the strike, and get the men back to work.

It was Lauschel's further testimony that until the memorandum was dated and initialed on October 12, 1947, he had viewed it simply as a proposal for a settlement, but that, once initialed, he regarded it no longer as a proposal, but as a strike settlement agreement embodying the full understanding of the parties. That, too, is the view of the Union and of the General Counsel.

Upon the foregoing facts, I am unable to conclude that the Union and the Respondent agreed that the principle of "strike seniority" was to control future reductions in force, as alleged by the Respondent.

The finding sought by the Respondent would, to begin with, patently vary and contradict the unambiguous terms of the signed strike settlement

agreement of October 12, 1947. I am persuaded that the parol evidence rule—which has as its basis the assumed intention of parties who have evidenced their understanding by a written document to place themselves beyond the uncertainties of extrinsic evidence—is applicable and controlling in this situation. The entire record, and Lauschel's testimony as well, makes it clear that when the parties dated and initialed the memorandum of October 12, they intended that document as an integration of all that had been said and done in the course of the negotiations. All prior negotiations between the parties thus became superseded by, and merged in, the written instrument itself, thereby precluding consideration of prior utterances and acts of the parties on the subject of the agreement for the purpose of varying, adding to, or subtracting from its terms.¹⁰ It is of no avail to the Respondent that it may have executed the agreement upon a mistaken assumption, however sincerely held, that certain of its terms would be construed in a manner different from their plain and ordinary meaning.¹¹ On the facts of this case, I am unable to conclude that the Respondent's mistaken assumption was mutually shared by the Union, or that it was induced by fraud or other improper conduct of the Union. But even if it were assumed, as some of Lauschel's testimony may suggest, that the negotiators for the respective parties

¹⁰⁹ Wigmore, *Evidence* § 2425, 2471 (3rd ed. 1940); Richardson, *Evidence* § 420 (4th ed. 1944).

¹¹Wigmore § 2415, 2460, 2461.

tacitly joined to conceal from the union membership a secret collateral understanding, the Respondent's position would not be aided. In that event, culpability for the concealment would have to rest at least equally with the Respondent's negotiators, who, as noted, were then on notice of the limited authority of the Union's negotiators and of the necessity of submitting the proposed settlement agreement in written form for union ratification. And the Respondent, whose negotiators had thus at least shared in inducing the union membership to rely on the writing, without revealing in the writing itself that certain unequivocal terms used therein were to be ignored or else construed in some special sense, would not now be in a position to escape the normal consequences of what was represented in writing as the agreement, on the basis of an alleged extrinsic prior oral understanding at variance with the specific written terms relied upon and approved by the union membership.¹²

Moreover, even if the Respondent were correct in contending that the parol evidence rule is inapplicable to this situation, the conclusion reached would be the same. Lauschel's own testimony accepted at face value it is found, is insufficient as a matter of substantial evidence to support a finding that the Respondent and the Union orally agreed that "strike seniority" was to govern employee retention rights in a situation such as prevailed when Cloninger and Walters were laid off from their

¹²See, Wigmore, § 2463.

departments. Apart from the questionable authority of the Union's negotiators to enter into an oral agreement binding on the Union, Lauschel's testimony fails to establish a meeting of minds between the negotiators for the respective parties on this subject. Clearly, there is no direct evidence of assent; for, as Lauschel himself conceded, the Union's negotiators at no time expressed their agreement with the Respondent on "strike seniority." Nor may an inference of assent reasonably be drawn from the conduct of the Union's negotiators in striking from the written document the "and without loss of seniority clause"; for such an inference would be inconsistent not only with the remaining terms of the document, but with the announced reason for the deletion. Proof of a bilateral agreement requires a positive showing of mutual assent to its terms, evidenced by the words or conduct of both parties to the transaction. Where, as here, the words are lacking and the conduct is too equivocal to show assent by one of the parties, it is not enough that the other may have unilaterally "assumed" the existence of an understanding.

It is found, contrary to the Respondent's contention, that the memorandum of October 12, 1947, reflects the strike settlement agreement, and that the Union did not agree to "strike seniority" upon a curtailment of operations, as alleged by the Respondent.¹³

¹³A procedural matter remains to be disposed of. The testimony of Lauschel relating to the negotiations leading to the strike settlement agreement was

4. Concluding findings

The central issue to be determined is whether the Respondent engaged in unfair labor practices within the meaning of Sections 8 (a) (3) and 8 (a) (1) of the Act, by selecting Gail Cloninger and Claude Walters for lay-off in their respective departments while retaining others junior to them in point of service—the selection admittedly having been made pursuant to the Respondent's previously formulated "Return-to-Work Policy," which provided, *inter alia*, that, in the event of a lay-off resulting from a curtailment of operations, employees who returned to work or were hired during the course of the 1947 strike were to possess preferential retention rights over employees who remained out until the termination of the strike.

received subject to a later motion to strike if the parol evidence rule were found applicable. Decision was reserved upon the motion to strike. Although the rule has now been found to apply, the motion to strike is, nevertheless, denied. The parol evidence rule is essentially a rule of substantive law; it is not a rule of evidence, though, like any principle of substantive law it may operate as a guide to what evidence should be admitted. (Wigmore § 2400, 2425). As a matter of substantive law, Lauschel's testimony, whether or not it is permitted to remain in the record, may not be considered for the purpose overriding the written signed agreement. For that reason, and because much of Lauschel's testimony is material to the contested issue of whether the agreement was intended as a completed document, it has been decided to deny the motion.

Although the Respondent contends otherwise in its brief, it is clear from the undisputed record facts, and it is found, that neither Cloninger nor Walters were actually replaced during the 1947 strike. As has been shown, immediately upon the strike's conclusion, both were restored to work on the precise jobs they had held when the strike began. In making the aforementioned finding, the Respondent's "partial reinstatement" argument has not been overlooked. The Respondent advances the novel thesis that, since common labor in any given department in the Respondent's plant is a "pooled" and not a specific job classification, the filling during the strike of any common labor jobs in a given department operated as a partial displacement of all in that department's common labor pool who remained out on strike. Consequently, the argument continues, strikers such as Cloninger and Walters upon their return to work at the end of the strike were entitled only to "partial reinstatement"—that is, a qualified form of reinstatement which restored to them all their former job rights, except the right which might otherwise flow from their seniority to displace upon a future reduction in force those employees who during the course of the strike had already "partially" displaced them.

At least as applied to this case, and particularly to the situation of Cloninger and Walters, the Respondent's "partial reinstatement" argument is found to be based upon premises, not only incon-

sistent with the terms of the strike settlement agreement,¹⁴ and otherwise false in fact,¹⁵ but unsup-

¹⁴The strike settlement agreement makes no reference, either expressly or by implication, to "partial reinstatement" of employees, who, like Cloninger and Walters, returned at the end of the strike to their former jobs which were still open at the time. On the contrary, the agreement explicitly provides for the return of such strikers "without discrimination" and for the protection of their "job rights."

¹⁵The Respondent's argument appears to be based upon fictional reasoning. Viewing the facts practically and realistically, it is difficult to comprehend how it can be said of employees like Cloninger and Walters that they were replaced even on a partial basis, when at the conclusion of the strike they were immediately returned to their former positions. Though common labor in each department be considered a pool, the pool presumably was no larger upon their return than when they left on strike. Even more difficult to follow is the claim that they were replaced by employees who had worked at their sides before the strike, but who, although they had also gone on strike, had chosen to return to work before the strike's termination. Whether or not an employee has been replaced is to be tested not by whether some one else has performed his work during his absence on strike, but by whether a vacancy exists for him to his former job at the time he elects to abandon the strike and to return to work.

In the case of Cloninger, the Respondent's own hypothesis would not support a finding that Cloninger was replaced in his department by Cox, the employee with less service credit who was retained when Cloninger was laid off. Cox, when he returned to work during the strike was placed in another department, and did not reenter Cloninger's department until some time after Cloninger's re-

portable in law. *N. L. R. B. v. Mackay Radio Telegraph Company*, 304 U. S. 333, does not, as the Respondent suggests, support its position in that regard; rather it refutes it. The holding in that case—that an employer “is not bound to discharge those hired to fill the places of (economic) strikers upon the election of the latter to resume their employment in order to create places for them”—is based upon the proposition that no discrimination may be found in an employer’s refusal to restore to work economic strikers for whom vacancies no longer are open because the employer, with the non-discriminatory object of continuing his business, has replaced the strikers during their voluntary absence on strike. But where, as in this case, places are in fact available for the returning strikers, and they are actually restored to their former jobs at the termination of the strike, the Mackay Radio doctrine cannot be construed to justify as non-discriminatory their “partial reinstatement,” as that term is used by the Respondent. For, as the Supreme Court expressly recognized in the Mackay Radio case, strikers during the course of a strike retain their status as employees under Section 2 (3) of the Act, and, if places are available upon their election to return, any discrimination in putting them back to work is prohibited by Section 8. The controlling rule was recently restated by

turn. How it can be said in these circumstances that Cox displaced Cloninger in the common labor pool of Cloninger’s department, baffles understanding.

the Board in Matter of General Electric Company, 80 N. L. R. B., No. 80, as follows: “* * * except to the extent that a striker may be replaced during an economic strike, his employment relationship cannot otherwise be severed or impaired because of his strike activity.”

There can be no doubt, and it is now well settled, that a seniority policy which classifies employees according to whether they had worked during a strike, or had not, to the detriment of the relative seniority standings of those who had not, discriminatorily and illegally impairs the employment relationship of those who had exercised their right under the Act to engage in concerted activities. See Matter of General Electric Company, *supra*; Matter of Precision Castings Company, 48 N. L. R. B. 870; and Matter of Paper, Calmenson and Company, 26 N. L. R. B. 553. And this is so regardless of whether or not there is in existence at the time a collective bargaining agreement covering the subject of seniority. In this case it has been found that a contract, including substantially the seniority provisions of the last Master Working Agreement, was in force when Cloninger and Walters were laid off. But were the facts otherwise, as the Respondent contends, the conclusion reached would still be the same. Seniority rights, to be sure, are not self existing rights arising from the mere fact of employment; they are rights that normally derive their scope and significance from union contracts. *Aeronautical Lodge v. Campbell*, 377 U. S. 521. But that does not mean, as the Respondent

further urges, that, in the absence of an agreement covering seniority, the Board is without jurisdiction to enter an order affecting seniority of employees. The Act's protective provisions, safeguarding employees against discrimination for having chosen to exercise their statutorily guaranteed rights, apply independently of contract. They are no less applicable where the discriminatory penalty for having exercised such rights takes the form of a departure from the order in which an employee could otherwise expect to be laid off upon an economic curtailment, than where it takes the form of an outright discharge of an employee whose tenure of employment is not protected by a contract.

It follows that the Respondent's application of its discriminatory seniority policy must be held violative of the Act, unless the Respondent has some other defense. The Respondent in its brief suggests several.

The Respondent's principal ground of defense has already been adverted to—its claim that the Union agreed to "strike seniority" as part of the 1947 strike settlement. The validity of such an agreement, had it been established, would have been open to grave doubt. For it is seriously to be questioned whether a Union may legally bargain away in a strike settlement a safeguard so fundamental as that accorded individual employees under the Act to be protected from discriminatory action for having exercised their guaranteed right to engage in

legitimate strike activities.¹⁶ That, however, is a question that need not be decided here. It has been found as a fact that the Union did not agree to "strike seniority." The finding of fact thus removes the question of law.

The Respondent asserts as a further defense that this proceeding is barred by the limitations provision of Section 10 (b) of the Act, as well as upon equitable doctrines. It is contended that the validity of the "strike seniority" policy is no longer open to attack, because it was established some 16 months before the filing of the charge, and because it was in the meantime allegedly acquiesced in by the Union. Section 10 (b) is clearly inapplicable. The issue in this case is not whether the Respondent committed an unfair labor practice by inaugurating the policy, but whether it violated the law by continuing to maintain it; more specifically by applying and giving effect to it in the lay-offs of Cloninger and Walters.¹⁷ These lay-offs occurred well within the statutory period limited by Section 10 (b). The Respondent's earlier conduct has been considered

¹⁶See *Matter of Briggs. Indiana Corporation*, 63 N. L. R. B. 1270, at 1272.

¹⁷The complaint, it is true, alleges that the Respondent violated the Act by "inaugurating," as well as by "maintaining and giving effect." to the policy. At the opening of the hearing, however, the General Counsel announced that an unfair labor practice finding was being sought only with regard to the Respondent's conduct in maintaining and giving effect to the policy within the 6-month period preceding the filing of the charge.

here merely for the purpose of bringing into clearer focus the conduct in issue. Even without such consideration, however, the allegations of discrimination would have been found amply supported by such undisputed record facts as bear directly upon the lay-offs of Cloninger and Walters.

The further contention, that the proceeding is barred upon equitable grounds because of the Union's alleged long acquiescence in the "strike seniority" policy, rests upon no firmer ground. In point of fact, the Respondent's position is found unsupported by the record. Acquiescence in a discriminatory policy cannot be implied merely from a failure to file an unfair labor practice charge, particularly where, as here, the Union protested the policy from the beginning, at least to the extent that the policy was made known to it. But even had acquiescence by the Union been established, it could not, in point of law, have estopped the Board from proceeding with the case. The Board does not exist for the adjudication of private rights, but acts in a public capacity to give effect to the declared public policy of the Act to promote the full flow of commerce by, among other things, proscribing certain practices, defined in Section 8, which have been found by Congress to affect commerce and to be inimical to the general welfare. *Phelps Dodge v. N. L. R. B.*, 313 U. S. 177; *Matter of H. M. Newman*, 85 N. L. R. B., No. 132. Nor is it a valid defense, that the Union accepted the Respondent's decision on the Cloninger grievance and failed altogether to process a grievance for

Walters. This is so not only because of the public policy considerations just indicated, but also because the Board has exclusive power to remedy unfair labor practices, a power which under Section 10 (a) of the Act, may "not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." See *N. L. R. B. v. Newark Morning Ledger Co.*, 120 F. 2d 262, 268 (C. A. 3), cert. den. 314 U. S. 693.

It is concluded and found that, by laying off Cloninger from the maintenance department on December 30, 1948, and Walters from the unstacker department on January 18, 1949, while retaining in such departments other employees, who, but for the fact that they had gone to work during the 1947 strike while Cloninger and Walters had not, would have been laid off ahead of Cloninger and Walters, and by thus applying and giving effect to a seniority policy under which employees who refrained from working during the entire course of the 1947 strike were to be laid off ahead of employees who returned to work or were hired during the course of that strike, the Respondent discriminated with regard to the hire and tenure of employment and the terms and conditions of employment of Cloninger and Walters, thereby discouraging membership in the charging local and in its parent International, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent, described in Section I, above, have a close, intimate and substantial relationship to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

Since both Cloninger and Walters, who were found to have been discriminatorily laid off, were restored to the jobs held by them prior to their discriminatory lay-off, no order of reinstatement is necessary. As has already been noted, no claim for loss of earnings is made in connection with the discrimination against Cloninger. Although such a claim is made with regard to Waters, I find it unsupported. On the basis of the facts set out above, I am persuaded that the several jobs offered Walters by the Respondent, beginning on January 20, 1949, were jobs which he could have filled, that such jobs were offered him in good faith by the Respondent, that he did not accept such jobs because

he did not desire to work during that period, and that any losses in earnings incurred by him between the date of his discriminatory lay-off from the un-stacker department on January 18, 1949, until he was reinstated to his former job, were wilfully incurred. Consequently, no back pay order is recommended in Walters' case. See *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177.

Although Cloninger and Walters are the only employees specifically found to have been discriminated against through application of the "strike seniority" policy, it appears that the Respondent continues to maintain that policy, and, unless the Respondent is ordered to cease and desist therefrom, the danger is to be anticipated that other employees similarly situated may upon a future curtailment of the Respondent's operations also suffer a discriminatory impairment of their employment relationship. Consequently, it will be recommended that the Respondent cease and desist from continuing to maintain or to give effect to said policy.

Conclusions of Law

1. International Woodworkers of America, Local 10-364, C.I.O., and its parent organization, International Woodworkers of America, C.I.O., are labor organizations within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment and terms and conditions of employment of Gail Cloninger and Claude Walters,

thereby discouraging membership in labor organizations, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By said acts, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, it is recommended that the Respondent, Potlatch Forests, Inc., Lewiston, Idaho, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining or giving effect to any seniority or lay-off policy which discriminates against any of its employees with regard to the order in which they are to be selected for lay-off, or with regard to any other aspect of their employment relationship, on the basis of whether they had or had not engaged in strike or concerted activities, or on the basis of the period during which they had engaged in such strike or concerted activities.

(b) Discouraging membership in International

Woodworkers of America, Local 10-364, C.I.O., and its parent organization, International Woodworkers of America, C.I.O., or any other labor organization of its employees, by in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment.

2. Take the following affirmative action, which it is found will effectuate the policies of the Act:

(a) Post immediately at its Clearwater plant at Lewiston, Idaho, copies of the notice attached hereto, marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondent, be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Nineteenth Region in writing, within ten (10) days from the receipt of this Intermediate Report what steps the Respondent has taken to comply therewith;

It is further recommended that, unless the Respondent shall, within ten (10) days from the receipt of this Intermediate Report, notify the Regional Director for the Nineteenth Region in writing that it will comply with the foregoing recommendations, the National Labor Relations Board

issue an order requiring the Respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 30th day of September, 1949.

/s/ ARTHUR LEFF,
Trial Examiner.

Appendix A

Notice to All Employees Pursuant to

The Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not maintain or give effect to any seniority or lay-off policy which discriminates against any of our employees with regard to the order in which they are to be selected for lay-off, or with regard to any other aspect of their employment relationship, on the basis of whether they had or had not engaged in strike activities, or on the basis of the period during which they had engaged in any such activities.

We Will Not discourage membership in International Woodworkers of America, Local 10-364, C.I.O., and International Woodworkers of America, C.I.O., or in any other labor organization of our employees, by in any other manner discriminating against any of our employees in regard to their hire or tenure of employment, or any term or condition of their employment.

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

POTLATCH FORESTS, INC.

(Employer.)

Dated

By,

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

RESPONDENT'S EXCEPTIONS TO INTER-
MEDIATE REPORT OF TRIAL EX-
AMINER

Respondent Potlatch Forests, Inc., makes exceptions to the Intermediate Report of the Trial Examiner herein, dated September 30, 1949, as follows:

A.

Exceptions to Rulings on Motions of Respondent

1. Exception is taken to the rulings of the Trial Examiner denying the motion to dismiss the complaint made at the opening of the hearing, which motion was renewed at the close of the hearing (page 2, folios 21-30; page 3, folios 1-3; page 3, folios 9-13) on the grounds that they are contrary to law.

B.

Exceptions to Findings of Fact and Conclusions of
Law Contained in the Intermediate Report

Section III A 2

1. Exception is taken to the findings and conclusions on page 5, folios 56-61 upon the grounds that the testimony and evidence does not sustain them in that they imply all of the agreements and understandings were reduced to writing.

Section III A 3

2. Exception is taken to the findings and con-

clusions set forth on page 7, folios 50-57, on the ground that said findings and conclusions are inaccurate and not supported by the testimony and evidence in that they state the "return-to-work" was drafted without consulting the Unions; that the employees were aware of their seniority status only when they, as individuals, inquired concerning their seniority status, and that the "return-to-work policy" was not generally publicized among the employees.

3. Exception is taken to the findings and conclusions on page 8, folio 33; page 9, folios 1-14, on the ground that the same are not supported by the testimony and evidence and are erroneous and inaccurate constructions of General Counsel's Exhibit 4. The findings and conclusions are erroneous and inaccurate in that the agreement of April 13, 1948, was an agreement on certain points but did not extend the basic Master Agreement of April 1, 1946, which, by its own terms, expired May 1, 1948.

Section III B 2

4. Exception is taken to the findings and conclusions set forth on page 11, folios 47-60 on the ground that said findings and conclusions are not supported by the testimony and evidence, are erroneous and inaccurate constructions of General Counsel's Exhibit 5 contrary to law. The findings and conclusions are inaccurate and erroneous in that they imply the entire strike settlement was included in said exhibit and that the "return-to-work"

policy is inconsistent with the terms of said exhibit.

5. Exception is taken to the findings and conclusions on page 12, folios 21-43; page 13, folios 1-37, on the grounds that they are not supported by the testimony and evidence and are not an accurate analysis of the testimony of Respondent's witness O. H. Leuschel. The findings and conclusions are erroneous and inaccurate in that they state and imply the negotiators were principally concerned with protecting men already at work against being displaced by returning employees. That was the immediate concern of the negotiators but not the principal concern. The displacement in the event of curtailment was as much concern to the negotiators as the displacement on the return to work. The only difference was in the time element involved. The findings and conclusions, together with footnote #9, further are inaccurate and erroneous in that they imply the Union negotiators conveyed to the Respondent's negotiators the reason set forth in footnote for deleting the clause "without loss of seniority" from the Union draft of the proposed settlement agreement. Respondent's negotiators, prior to the deletion, when they insisted upon the elimination of that clause, explained that the seniority of the individuals returning after the settlement would be affected insofar as they would not displace a person upon return to work or in the event of a curtailment. The seniority of the employees returning after the settlement would be intact for all other purposes as training, promotions and vacations. The

basic principles of the "return-to-work" policy and its operation were fully discussed, understood and agreed upon between the negotiators and they understood the necessity of eliminating the clause.

The conclusions and findings further are erroneous and inaccurate and not supported by the testimony and evidence, particularly on page 13, folios 5-9, in that there is no testimony or evidence that the entire agreement and understanding was to be reduced to written form for submission to and ratification by the Union. The entire informal agreement has never been reduced to a formal written agreement signed by the respective parties.

Said findings and conclusions further are inaccurate and erroneous and not supported by the testimony and evidence in finding Respondent's witness Leuschel admitted or took the view that the proposed memorandum (General Counsel's Exhibit 5) embodied the sole and complete understanding and agreement of the parties. The conclusion the Union and the Respondent had not agreed to the basic principles as set forth in the "return-to-work policy" (General Counsel's exhibit 10) is an erroneous and inaccurate construction of the testimony and evidence and such conclusion is not supported by the testimony and evidence.

6. Exception is taken to the findings and conclusions of page 13, folio 39-57; page 14, folios 1-46, for the reason that the same are not supported by the testimony and evidence and are contrary to law. The conclusions and findings are erroneous and in-

accurate in that they find and imply that General Counsel's Exhibit 5 contains the entire understanding, agreement and settlement between the parties, and the written terms of said Exhibit are unambiguous. The actions of the Union negotiators striking out the clause "without loss of seniority" when they had been told, knew and agreed with the position of the Respondent's negotiators as to the operation of the "return-to-work policy" and the application of seniority upon the return to work of the employee or in the event of a subsequent curtailment, constituted an acceptance on the part of the Union negotiators of the Respondent's counter offer of settlement of the strike.

The findings and conclusions further are inaccurate in that they imply the negotiators for the respective parties connived to conceal from the Union membership a secret collateral understanding. There is no evidence of any such connivance. The manner and method of submitting and explaining the various understandings and agreements between the negotiators to the Union membership, either in oral or written form, are and were solely the duty and responsibility of the Union's negotiators. The evidence shows that there never has been a written ratification or approval by the membership or on its behalf, of the complete strike settlement agreement or that all the terms ever have been reduced to a formal written instrument signed by the respective parties.

The evidence does not sustain the conclusions and findings that the Union's negotiators announced

their reasons for deleting the clause, "and without loss of seniority." No such reasons were announced by the Union negotiators. The only fair and accurate construction of the negotiations and acts of the Union negotiators is that they accepted the Respondent's counter offer of settlement which included the basic principles of the "return-to-work policy" by eliminating the words "without loss of seniority." There is no evidence that the Union negotiators failed to explain to the membership the reasons for the striking of that clause from the Union's original proposed offer of settlement. There is no evidence that the Union negotiators conveyed to the Respondent's negotiators any details of the membership discussion.

The findings and conclusions on page 14, folio 43-46, that the memorandum of October 12, 1947, (General Counsel's Exhibit 5) reflects the entire of the strike settlement agreement and that the union did not agree to the principles of the "return-to-work policy" in the event of a curtailment are not supported by the testimony and evidence and are contrary to law.

Section III B 4

7. Exception is taken to the findings and conclusions on page 15, folios 1-13, with reason that the same are not supported by the testimony and evidence. The findings and conclusions are erroneous and inaccurate in that they infer the principles of the "return-to-work policy" were not understood, agreed to and accepted by the Union.

8. Exception is taken to the findings and conclusions on page 15, folios 15-19, upon the grounds that they are not sustained by the evidence and are contrary to law. The evidence was undisputed that both Cloninger and Walters were common laborers, that common labor is a pooled classification and employees in the common labor pool have no rights to any specific job; and that there were common laborers employed in their respective departments when they returned from the strike. This being so, Cloninger and Walters had been replaced, both in keeping with General Counsel's Exhibit 5 and the "return-to-work policy."

9. Exception is taken to the findings and conclusions on page 17, folios 8-10, as the same are contrary to law.

10. Exception is taken to the findings and conclusions on page 17, folios 13-23, upon the ground they are contrary to the testimony and evidence and are contrary to law. The principal issue is whether or not it is an unfair labor practice within the meaning of 8 (a)(1) of the National Labor Relations Act, as amended, to follow a policy and seniority practice set up in accordance with the provisions of a strike settlement agreement negotiated by the bargaining agent, which policy protects the seniority of strikers for all purposes except in the event of curtailment. In that event an employee who returned to work prior to the termination of the strike cannot be displaced by one who did not return until after the termination of the strike.

The failure of the Trial Examiner to rule on the validity of the agreement and understanding covering the principles of the "return-to-work policy" is the principal issue of this case and exception is taken to the failure of the Trial Examiner to find and conclude that such an agreement is valid.

11. Exception is taken to the findings and conclusions on page 17, folios 25-50; page 18, folios 1-18, upon the grounds that the same are contrary to law. Said findings and conclusions hold that the proceedings are not barred by the limitation provisions of Section 10 (b) of the National Labor Relations Act, as amended, and the equitable doctrine of laches.

12. Exception is taken to the findings and conclusions on page 18, folios 14-34, upon the grounds they are not supported by the evidence and are contrary to law. Said findings hold that the "return-to-work policy" as applied to Cloninger and Walters discouraged membership in the Union, interfered, restrained, and coerced employees in the exercise of their rights guaranteed under Section 7 in violation of Section 8 (a) (1) of the National Labor Relations Act, as amended.

Section IV

13. Exception is taken to the findings and conclusions on page 18, folios 39-44, upon the ground they are not supported by the testimony and evidence and they are contrary to law.

14. Exception is taken to Conclusions of Law Nos. 2, 3, and 4 on page 18, folios 25-38, upon the ground that they are not sustained by the testimony and evidence and they are contrary to law.

15. Exception is taken to Recommendations Nos. 1 (a), (b), and 2 (a) and (b), on pages 19 and 20, being folios 46-60 and 1-24, respectively, for the reason that the same are not sustained by the testimony and evidence and are contrary to law.

It is respectfully submitted the Respondent has committed no unfair labor practice in violation of the National Labor Relations Act, as amended, and the complaint should be dismissed.

Respectfully submitted,

ELDER, ELDER AND SMITH.

By /s/ R. N. ELDER,

Attorney for Potlatch Forests,
Inc.

GEORGE W. BEARDMORE,

Attorney for Potlatch Forests,
Inc.

Received November 8, 1949.

United States of America
Before the National Labor Relations Board
Case No. 19-CA-166

In the Matter of
POTLATCH FORESTS, INC.

and

INTERNATIONAL WOODWORKERS OF
AMERICA, LOCAL 10-364, C.I.O.

DECISION AND ORDER

On September 30, 1949, Trial Examiner Arthur Leff issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to the undersigned three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the In-

intermediate Report, the Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Potlatch Forests, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining or giving effect to any seniority or lay-off policy which discriminates against any of its employees with regard to the order in which they are to be selected for lay-off, or with regard to any other aspect of their employment relationship, on the basis of whether they had or had not engaged in strike or concerted activities, or on the basis of the period during which they had engaged in such strike or concerted activities;

(b) Discouraging membership in International Woodworkers of America, Local 10-364, C.I.O., and its parent organization, International Woodworkers of America, C.I.O., or any other labor organization of its employees, by in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post immediately at its Clearwater plant at Lewiston, Idaho, copies of the notice attached hereto, marked Appendix A.¹ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondent, be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Nineteenth Region in writing, within ten (10) days from the receipt of this Intermediate Report what steps the Respondent has taken to comply therewith.

¹In the event that this Order is enforced by a decree of a Circuit Court of Appeals, there shall be inserted before the words, "A Decision and Order" the words, "Decree of the United States Court of Appeals Enforcing."

Signed at Washington, D. C., this 21 day of December, 1949.

JOHN M. HOUSTON,
Member.

JAMES J. REYNOLDS, JR.,
Member.

ABE MURDOCK,
Member.

[Seal] NATIONAL LABOR
RELATIONS BOARD.

Appendix A

Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not maintain or give effect to any seniority or lay-off policy which discriminates against any of our employees with regard to the order in which they are to be selected for lay-off, or with regard to any other aspect of their employment relationship, on the basis of whether they had or had not engaged in strike activities, or on the basis of the period during which they had engaged in any such activities.

We Will Not discourage membership in International Woodworkers of America, Local 10-364, C.I.O., and International Woodworkers of

America, C.I.O., or in any other labor organization of our employees, by in any other manner discriminating against any of our employees in regard to their hire or tenure of employment, or any term or condition of their employment.

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

POTLATCH FORESTS, INC.

(Employer.)

Dated

By,

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America, Before the National
Labor Relations Board, Nineteenth Region

Case No. 19-CA-166

In the Matter of
POTLATCH FORESTS, INC.,
and
INTERNATIONAL WOODWORKERS OF
AMERICA, LOCAL 10-364, C.I.O.

July 11, 1949—10:00 A.M.

Met pursuant to notice at 10:00 o'clock a.m.
Before: Arthur Leff, Trial Examiner.

Appearances:

H. J. MERRICK,
General Counsel.

HARRY GEORGE, JR.,
Appearing for the International Wood-
workers of America, C.I.O., Local Union
10-364.

ALBERT HARTUNG,
Appearing for the International Wood-
workers of America, C.I.O., Local Union
10-364.

R. N. ELDER,
Appearing for Potlatch Forests, Inc., Re-
spondent.

GEORGE W. BEARDMORE,

Appearing for Potlatch Forests, Inc., Re-
spondent.

PROCEEDINGS

Mr. Merrick: Well, for the sake of the record I will read into the record what the compliance status of the various locals at this time is. The International organization, their compliance will expire September 17th, 1949. Local 119 is not in compliance and, apparently, there is no intention on their part to effect compliance. Local 358 went out of compliance on August 1st, 1948, and tell me they are attempting to effect compliance; a couple of more affidavits and they will be back in compliance. Local 361 is in compliance until July 25th, 1949. Local 364, the charging party in this particular proceeding, they went out of compliance on June 30th, 1949, and certificate of intent was filed by that local, which grants them an additional ninety days, so, at the present time they are in compliance to Board provisions.

Mr. George: One?

Mr. Merrick: No, two of the four locals are not in compliance. 358 is attempting to effect compliance but they are not in compliance at the present time. It is quite possible they may be in compliance before the next few days are past but at the present time it is my information that they are not in compliance. [11*]

* * *

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Elder: As to the third point which we have set forth in our motion, that the complaint should be dismissed for the further reason that it does not set forth facts sufficient to, or within the meaning of Section 8, sub-section 31 of said Act. We contend, at least, for the purpose of the record, that the complaint must include allegations to the effect that the bargaining agent, the bargaining unit, including the International and the four locals in this case, must show in the complaint that they have complied with the National Labor Relations Act and, particularly, Section 9, sub-sections F, G and H of the National Labor Relations Act, as amended.

Trial Examiner Leff: In other words, it is your contention that that is a jurisdictional requirement of the Act and it is incumbent upon the General Counsel both to plead and prove compliance? [15]

Mr. Elder: That is right.

Trial Examiner Leff: I would have thought that there was considerable merit to your position except that the Board has ruled otherwise. I have had the matter up before and I know that the Board has ruled that it is an administrative matter.

Mr. Merrick: It is an administrative matter.

Trial Examiner Leff: That need not be pleaded or proved, consequently, I shall deny your motion. The record will show my denial of the motion. If you want to raise the matter in court, of course, you have an opportunity to do so. [16]

Mr. Merrick: Well, the charge in this case was filed by Local 10-364 of the C. I. O. on behalf of two of its members who have been, we maintain, unjustly discriminated against and it charges that other I. W. A.-C. I. O. Locals, plus the International organization have been for a number of years the collective bargaining agent for various employees of the Respondent company. In the Spring of '47 after contract negotiations for wage increase were unsuccessful, a strike was called on August 7th, 1947, and this strike lasted until the 13th day of October, 1947, when the Union and the Respondent were able to execute a strike settlement agreement setting out certain conditions under which the strikers will return to their jobs at the Respondent mill. Prior to the end of this strike a great percentage of the original strikers had returned to work through the picket lines and the Company had, of course, hired quite a number of new employees. After the end of this strike on October 13th, 1947, the Respondent inaugurated a so-called return to work policy which, among other things, granted super-seniority to those employees who had returned to work during the strike and which policy, of course, diminished the seniority of those men who had stayed out on strike during [21] the whole course of the strike. By its pleadings the Respondent admits the existence of this policy and, of course, they disagree as to how it came about and, apparently, that is what most of the testimony in this proceeding will involve, as to just how that

return to work policy was inaugurated. It is the contention of the General Counsel that the Respondent, by giving effect to this policy, namely, depriving strikers of their seniority standing in relation to non-strikers or those strikers who went back to work through the picket line, is penalizing them for their concerted activity.

Trial Examiner Leff: Are you relying on the General Electric case?

Mr. Merrick: Yes, sir, I am and, of course, as discrimination against them in regard to their tenure of employment; in regard to violation of 8 (a) (3). We do not allege an independent 8 (a) (1), of course. I think that is about all I have, Mr. Examiner. In other words, that it falls to 8 (a) (3), to prove it. [22]

* * *

Trial Examiner Leff: Mr. Elder.

Mr. Elder: We went into a little bit of the history, it is very short, and I was going to present this later, I didn't know what your procedure was, at the beginning of our case for the purpose of clarifying it as far as the Examiner is concerned and counsel for the government as well as the Union, the operations of the Respondent that are within what we claim the bargaining unit, consist of three sawmill and manufacturing plants located at Lewiston, Coeur d'Alene and Potlatch, Idaho, and two logging operations; one located in the vicinity of Bovill, Idaho, and the other in the vicinity of Headquarters, Idaho, The Company employs approximately 2600 men.

On March 4, 1944, the C. I. O. was first certified as the bargaining agent by the National Labor Relations Board representing the employees in the several plants and logging operations of the Company. On March 10 and 11, 1948, an election was again held by secret ballot and as a result of this election the National Labor Relations Board again certified the C. I. O. as the bargaining agent for the employees of Potlatch Forests, [24] Inc. At the time of this election and certification and at all times previous and since, the International Union had affiliated with it Local Unions 10-119, 10-358, 10-361 and 10-364, each of which have members among the employees in the bargaining unit. Locals 10-119 and 10-358 had not at that time complied with the National Labor Relations Act, as amended, and are not now in compliance with the Act, and, therefore, neither the bargaining agent nor any part thereof is qualified to use the processes of the National Labor Relations Board.

Although no collective bargaining agreement between the Union and the Respondent exists at this time the bargaining agent did enter into a collective bargaining agreement with the Respondent on the first of April, 1945, and on April 1, 1946, which agreement was in effect until May 1, 1948. In all these agreements the Union acknowledged that the true bargaining agent was composed of the International and the four affiliated Locals.

On August 7, 1947, this bargaining agent, including the International and the four affiliated Locals,

called an economic strike of Respondent's employees for the purpose of securing a wage increase. As a result of said strike the employees quit work, left their jobs, and the operations of the Respondent ceased. On August 29, 1947, employees commenced returning to work and on October 10, 1947, some seventeen hundred fifty employees were working in the bargaining unit of the [25] Potlatch Forests, Inc.

It is further the position of the Respondent that on or about October 7, 1947, the officers of the Respondent were approached by officers of the International Union, and that they met in negotiation seeking a settlement and termination of the strike. After several meetings a settlement was reached which provided among other things that employees who had returned to work prior to the settlement would in no instance be displaced by an employee who returned after the settlement. It was agreed that all men returning to work after the strike settlement would be paid the same wage as they were receiving at the time of the strike. They would be guaranteed the same seniority status as far as promotion and vacations were concerned but their seniority would not be protected at the time of any curtailment. It having been agreed that in no instance would an employee returning after the settlement replace an employee who had returned prior to the settlement. This particular question was thoroughly discussed in the meeting between the Union and the Respondent, and it was pointed out

that this provision would have no material effect until such time as there was a major curtailment. As a result of this settlement agreement the men who wanted to return to work did return to work. On October 13, 1947, the pickets were withdrawn from all of the operations of the Respondent.

In accordance with this agreement the Respondent established [26] what has been called the "return to work" policy which has followed strictly the terms of the strike settlement agreement. It guarantees to every employee who returned to work prior to October 22, 1947, the same wage he was receiving prior to the time the strike was called. It protects the seniority of each and every employee as far as promotion and vacations are concerned. It provides that employees who returned to work prior to the strike settlement, in the event of curtailment, cannot be replaced by an employee who returned after the strike settlement.

We will show that the Union officials had knowledge of the return to work policy and that it was set up in keeping with the provisions of the strike settlement agreement. This policy has been followed since the day the strike was settled with full knowledge on the part of the Union.

As to Claude Walters and Gail Cloninger, the return to work policy would have been followed except we will show that the two men were both common laborers and were transferred to other common labor jobs on the plant because of conditions beyond the control of the Respondent. They

refused to accept the transfer and their layoff and loss of time resulted from that refusal rather than from any act of the Respondent.

The true issue in this case is not back pay for these two men but is to determine whether respondent has the right to follow its return to work policy set up in accordance with [27] the provisions of the strike settlement agreement negotiated by the Union officials. [28]

* * *

FRANK GORDON

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Trial Examiner Leff:

Q. What is your full name?

A. Frank E. Gordon.

Q. Where do you live, Mr. Gordon?

A. Route Two, Box 128, Clarkston, Washington.

Q. (By Mr. Merrick): At the present time, Mr. Gordon, what is your occupation?

A. I am a representative of the International Woodworkers of America, C. I. O.

Q. Do you have any title in connection with that job? A. I am an organizer.

Q. How long have you held this job?

A. About three years, approximately three years.

(Testimony of Frank Gordon.)

Q. And where were you employed previous to that time?

A. On the War Production Board.

Q. What are your duties as an organizer for the I. W. A.?

A. My duties here are to do some organizing work and to assist the various Local Unions, principally in the area; principally those in Potlatch Forests. [31]

Q. Then, you are familiar with the operations of the Potlatch Forests Company?

A. That is right.

Q. To your knowledge what labor agreements has your organization had with the Potlatch Forests, Incorporated?

A. The only agreement that I had anything to do with was the 1946 agreement. That is the first one that I had any dealings with.

Mr. Merrick: Maybe I had better put that in at this time, if it please the Trial Examiner. I would like to have the reporter mark this printed copy as General Counsel's Exhibit No. 2 for identification.

(Thereupon the document above referred to was marked for identification.)

Q. (By Mr. Merrick): Is this the particular contract that you referred to, Mr. Gordon (hands paper to witness)?

A. Yes, that is the copy.

Q. And when you started working as an organ-

(Testimony of Frank Gordon.)

izer in this area this was the contract that was in effect between the parties?

A. As I remember, yes. That was run up that year and to my knowledge the one prior, my knowledge of the one before that is very limited.

Mr. Merrick: I would like to offer General Counsel's Exhibit No. 2 in evidence.

Mr. George: Is it the contention of the parties that [32] this copy is a true copy of the original?

Mr. Merrick: There is no dispute. I believe we could not find an original copy and counsel is agreeable to put in this copy.

Mr. Elder: We are admitting the copy.

Trial Examiner Leff: There being no objection, General Counsel's Exhibit No. 2 is admitted.

(Thereupon the document above referred to was received in evidence as General Counsel's Exhibit No. 2.)

GENERAL COUNSEL'S EXHIBIT No. 2

Master Agreement

This master agreement entered into effective this 1st day of April, 1946, between Potlatch Forests, Inc., hereinafter known as the Company, and Local No. 358, Pierce, Idaho; Local 361, Elk River, Idaho; Local 119, Coeur d'Alene, Idaho; and Local 364, Lewiston, Idaho, International Woodworkers of America affiliated with the Congress of Industrial Organizations, hereinafter known as the Union.

(Testimony of Frank Gordon.)

Article I—Recognition

The Company recognizes the Union as the sole collective bargaining agency for its production and maintenance employees as certified by the National Labor Relations Board. It agrees to negotiate with a committee selected by these employees who are members of said International Woodworkers of America, Local 358, Pierce; Local 361, Elk River; Local 119, Coeur d'Alene; and Local 364, Lewiston, their representatives or agents.

Article XIII—Seniority

Section 1

The Company and the Union recognize the principles of seniority in the matter of promotions and retention of job during curtailment, competency considered:

(a) The Company and the Union agree that many job classifications, particularly in semiskilled and skilled work, require certain training, and that in making promotions to such jobs, the Company need consider only the qualified employees who have had such training. Any employee who is promoted shall be given a reasonable trial period. Should he fail to qualify for the position to which he has been provisionally promoted, he shall revert to his former position without prejudice and without any loss of seniority rights.

(b) The Company and the Union agree that

(Testimony of Frank Gordon.)

seniority in a job classification within a department shall date from the first date an employee is permanently rated in such job classification; that seniority within a department itself shall date from the first date an employee is rated within the department; and that seniority in the plant shall date from the date of an employee's last employment by the Company. No seniority in job classification or department shall extend beyond this date of last employment by the Company.

(c) All seniority shall be considered first by job classification, second by department, and last by plant. It shall be used as a basis for preference in shift as well as promotion and in event of curtailment or during slack work periods. An employee demoted shall go back down through the same route by which he progressed.

(d) Any employee who volunteers or is inducted into the armed services of the United States of America during the present national emergency shall accumulate seniority while so serving just as though he had never left the employ of the Company and shall otherwise receive the benefits of federal laws and regulations. This paragraph shall not apply to employees who worked for other companies in the interval between leaving the employ of this company and induction.

(e) The departments for the woods operations and the three sawmill units shall be as set forth in Exhibits attached hereto.

(Testimony of Frank Gordon.)

(f) Any employee who is promoted to a foreman's position shall in the event of curtailment or change of plans by the Company be returned to his former position with full seniority accumulated for the time spent as foreman. The Company has the right to pick or change any foreman without reservation.

(g) All employees who have transferred from one department to another shall retain seniority rights in the department they left, such seniority to be exercised only in event of curtailment.

(h) In times of labor shortage the Company may temporarily divert men or crews from their regular work or even from their regular department, in order to maintain production. In the event of a shortage of work in any department men or crews who are out of work may be temporarily transferred to other available work even in other departments. Unless such temporary transfers shall be for a period of two consecutive weeks or more, no question of seniority shall be involved.

(i) Employees off the payroll for a period of 12 consecutive calendar months shall have no seniority rights, except as provided in Article XI, Section 2. Employees laid off through no fault of their own for a period of more than 12 months shall have prior right to reemployment ahead of new employees in case they can still be reached.

Section 2

(a) It is recognized that the Company has certain obligations to furnish employment for the pur-

(Testimony of Frank Gordon.)

pose of giving training and knowledge of its operations to future salesmen and others. Such training must be of an industry wide nature; and it is agreed that the Company may designate to the Union, certain jobs throughout the various operations which are to be used for this purpose, and that such designated jobs shall be at the entire disposal of the Company to be filled and used by the Company as it sees fit.

The number of such jobs shall not be in excess of the following:

Fifteen jobs for Clearwater Plant.

Ten jobs for Potlatch Plant.

Five jobs for Rutledge Plant.

Ten jobs for Headquarters Woods.

Ten jobs for Bovill Woods.

and shall not be subject to the seniority regulations of this agreement. If the Company at times has no need for some of these jobs, they may be temporarily filled by the Employment Offices, but shall be immediately available to the Company if necessary; and the temporary employees shall have established seniority, but no job rights, through occupancy of that particular job.

Received in Evidence July 11, 1949.

Q. (By Mr. Merrick): Mr. Gordon, could you briefly give us the jurisdiction of the Locals named

(Testimony of Frank Gordon.)

in that agreement in relation to the Potlatch operations?

A. Well, the jurisdiction of Local 119 would be the Rutledge Mill Unit in Coeur d'Alene. The jurisdiction of 358 would be the Clearwater Woods at Headquarters, in the neighborhood of Headquarters, Idaho. And 361 would be the Potlatch Mill at Potlatch, Idaho, the Lewis Mill out of Bovill, Idaho, and the logging operations in and around Bovill, Idaho, and the jurisdiction of Local 364 is of the Clearwater Sawmill Unit at Lewiston.

Q. When you first started to work, then, for the I. W. A. one of your first jobs was the administration of this particular contract, is that correct?

A. Yes, we were working under the agreement. I believe there was an agreement prior to that but one of our first jobs was [33] the drawing up of this 1947 agreement.

Q. Well, in relation to this contract did you take part in any negotiations which looked to making interpretations regarding clauses of that contract?

A. Of this one that has been submitted?

Q. Yes, sir. A. Yes.

Mr. Merrick: I would like to have the reporter mark this document as General Counsel's Exhibit No. 3 for identification. It purports to be an agreement, an agreed interpretation of clauses on which the Union desired clarification. It is dated May 7th, 1947.

(Thereupon the document above referred to was marked for identification.)

(Testimony of Frank Gordon.)

Q. (By Mr. Merrick): Is this the interpretation you referred to?

A. Yes, that is the one.

Q. Is that your signature? Was your signature placed on that document?

A. I think it was. My signature isn't here. I didn't get the copy.

Mr. Merrick: I note that this is, also, a copy. We can't find the original of this agreement and, apparently, the Company can't find theirs, either.

Mr. Elder: We haven't looked because counsel just asked us as to this matter when we sat down here. I would like to [34] reserve our objections so as to check it with the original, if we can find the original we will bring it in to the Examiner and, in the meantime, withhold it with the right to reserve our objections to this.

Trial Examiner Leff: Very well, General Counsel's Exhibit No. 3 will be admitted. If, after checking its records the Respondent finds that it is not an exact copy it may make an appropriate motion to have General Counsel's Exhibit No. 3 stricken from the record.

Mr. Merrick: Do you want to read it at the present time?

Trial Examiner Leff: I think I will glance over it. Please proceed.

Q. (By Mr. Merrick): Mr. Gordon, you might explain what was the purpose of this interpretation meeting?

(Testimony of Frank Gordon.)

A. Well, there were certain clauses in the agreement that had been a source of trouble in our bargaining with the company and it was agreed pretty well between the Company and the Union that it would be helpful to get together and arrive at certain interpretations on various clauses that had caused us some trouble.

Q. Mr. Gordon, do you recall when this 1946 master agreement was opened, that is I am referring, now, to General Counsel's Exhibit 2?

(Thereupon the document above referred to was admitted in evidence as General Counsel's Exhibit No. 3.)

A. What date it was opened?

Q. Yes, for negotiations.

A. Well, it was opened in accordance with its opening date and [35] it would be, negotiations, I believe, were started, the first meeting, I believe, was some time in March prior to the opening date.

Q. That is, you are referring to March, 1947?

A. Yes.

Q. Do you recall if any agreement was reached as a result of these negotiations?

A. An agreement was reached on a late date. However, I cannot recall the exact date that that agreement was arrived at in which the Company and the Union agreed to the re-establishment of the entire working agreement, plus the various interpretations. No, I am wrong about that, to the re-establishment of the agreement with the exception

(Testimony of Frank Gordon.)

of the wage clause, which was held open pending the settlement of the dispute over a differential of 7½ cents between this area and the Coast.

Mr. Merrick: I might clarify matters if I would have the reporter mark this document as General Counsel's Exhibit No. 4 for identification.

(General Counsel's Ex. No. 4 marked.)

Q. (By Mr. Merrick): Handing you General Counsel's Exhibit 4 for identification, is this the agreement that you refer to, (hands paper to witness) ?

A. Yes, I would say that that is the agreement, as I remember it.

Mr. Merrick: I would like, also, to offer that in evidence after counsel inspects it. It, also, is a copy. We do not have an original of the particular agreement. [36]

Mr. Elder: We would like, Mr. Examiner, to please have the same ruling on this exhibit, which is General Counsel's Exhibit No. 4, as on No. 2.

Trial Examiner Leff: Very well, General Counsel's Exhibit No. 4 is admitted as subject to the same reservation that was made with respect to General Counsel's Exhibit No. 3.

(Thereupon, the document above referred to was admitted in evidence as General Counsel's Exhibit No. 4.)

Q. (By Mr. Merrick): Mr. Gordon, did a contract result as a result from that conference?

(Testimony of Frank Gordon.)

A. Yes, with the exception of the wage clause.

Q. Well, what happened over that wage clause, will you explain to the Trial Examiner?

A. Well, there were several meetings with the Company between the International negotiating committee, along with representatives of the various Local Unions, which eventually ran into disagreement and a strike resulted.

Trial Examiner Leff: This agreement, General Counsel's Exhibit No. 4, never actually went into effect, is that correct?

A. No, that did go into effect.

Trial Examiner Leff: Including the 7½ cents an hour increase?

A. No, the 7½ cents an hour increase was granted the workers but not the 7½ cents an hour differential. We never did settle [37] that.

Mr. Merrick: I believe that is paragraph, what paragraph is that?

A. I believe there is a paragraph that explains that there, that the contract is held open.

Q. (By Mr. Merrick): You might explain to the Trial Examiner what this differential related to.

Trial Examiner Leff: Is that the only point on which you cannot agree?

A. That is right.

Trial Examiner Leff: And is that what resulted in the strike?

A. That is what resulted in the strike.

Q. (By Mr. Merrick): How long did this strike last?

(Testimony of Frank Gordon.)

Trial Examiner Leff: When did it start?

Q. (By Mr. Merrick): From what date did this strike start, Mr. Gordon?

A. I believe it was August 7th.

Q. 1947? A. 1947.

Q. And how long did this strike last?

A. It lasted until October 13th, 1947.

Q. Now, do you recall what events brought about the end of this strike or how the end of the strike was effected?

A. Do you mean what procedures were followed?

Q. Yes, did you work out a strike settlement or enter into any negotiations with the Company? What was done about it?

A. There was, the strike settlement was arrived at——

* * *

Q. (By Mr. Merrick): Well, I might enlarge on that: did you take part in any of the negotiations looking toward the strike settlement?

A. Yes.

Q. You were not present, of course, when the actual agreement was signed, is that what you mean? A. That is true.

Q. But you did take part in the negotiations looking toward the settlement?

A. That is right.

Q. As a result of these negotiations was a strike settlement [39] effected? A. Yes.

Mr. Merrick: I would like to have this docu-

(Testimony of Frank Gordon.)

ment between the Potlatch Forests, Inc., and the purports to be a copy of a strike settlement agreement between the Potlatch Forests, Inc., and the I. W. A. It bears date of October 12th, 1947, and it has initials typed in at the bottom.

(Thereupon the document above referred to was marked for identification.) [40]

* * *

Trial Examiner Leff: Very well, on the record. With reference to General Counsel's Exhibit No. 5 I understand that Mr. Elder does not dispute that it is an accurate copy of the strike settlement agreement which was entered into on the date mentioned. However, Mr. Elder contends on behalf of the Respondent that that instrument, General Counsel's Exhibit No. 5, does not contain the full strike settlement agreement as it was finally agreed upon. It is his contention that General Counsel's Exhibit No. 5 merely contains a memorandum of the proposed strike settlement agreement which was entered into at that time and that he intends to supplement it by further proof. The General Counsel's representative, on the other hand, contends that that is the full agreement, is that correct?

Mr. Merrick: Yes, that that is the contract.

Trial Examiner Leff: Now, with that understanding I shall [42] receive General Counsel's Exhibit No. 5. Have I stated the understanding correctly?

Mr. Elder: In the beginning of your statement

(Testimony of Frank Gordon.)

you stated it was Mr. Elder's contention that this is a true and correct copy of the strike settlement agreement. I believe you corrected it later but it is our contention that it was a proposed memorandum of a proposed settlement agreement and was not an actual settlement of the strike.

Trial Examiner Leff: It is so understood.

Mr. Merrick: Has this been admitted?

Trial Examiner Leff: Yes, 5 has been admitted.

(Thereupon the document above referred to was admitted in evidence as General Counsel's Exhibit No. 5.)

GENERAL COUNSEL'S EXHIBIT No. 5

As a basis for settlement of the present dispute between the I.W.A. and the Potlatch Forests, Inc., the following is proposed:

1. The Union agrees to withdraw its demands for a 7½% wage increase to eliminate the differential. Wages to remain at rates as of August 6, 1947. Picket lines to be withdrawn as of October 13, 1947.

2. All former employees of the Potlatch Forests, Inc., will return to work without discrimination, on Monday, October 13th. Former employees shall return to work by October 22, to protect their job rights. In the event the job formerly held by the returning employee is not open, the employee will be given other work and receive pay on the basis of the rate paid on his former job.

(Testimony of Frank Gordon.)

3. Men previously on gypo basis will be assigned to gypo work if still available. If gypo work is not available, pay will be at the rate shown in wage schedule for the job.

4. The Company has informed the Union that the night shift of the box factory in the Clearwater Mill, cannot be started at this time, due to business conditions, and for that reason, it may not be able to employ all of the former box factory workers immediately. These box factory workers will be given preference over new employees in filling vacancies in other departments.

5. The present contract will remain in effect without change, except that the following is substituted for the 4th paragraph in Article VII.

“As a condition of continued employment, every employee who confirms, to the Company through the Union, his membership in the Union as of November 20, 1947, or becomes a member of the Union after November 20, 1947, shall be required to maintain his membership in good standing.”

Dates added 10/12/47.

GENERAL COUNSELS—5

C. L. B.

W. B.

O. H. L.

Received in evidence July 11, 1949.

(Testimony of Frank Gordon.)

Mr. George: While they are stipulating, Mr. Examiner, could it be further stipulated as to who those initials are, as only counsel knows.

Trial Examiner Leff: Yes, I think it's a good idea. Who is C. L. B., can you stipulate that?

Mr. George: I think the Company knows.

Mr. Elder: C. L. Billings. He is the General Manager of the Company.

Trial Examiner Leff: And who is W. L. B.?

Mr. Elder: Walter Botkin, that is his name, representing the Union.

Trial Examiner Leff: What was his official position? [43]

Mr. Hartung: Vice-President of the International.

Trial Examiner Leff: Is this his initials?

Mr. Elder: Otto H. Lauschel, Assistant General Manager, and now General Manager of the Company.

Trial Examiner Leff: Now, is it stipulated that this agreement was prepared, this memo was prepared on October 12th, 1947, the date it bears?

Mr. Merrick: Yes, I think the pleadings admit that.

Trial Examiner Leff: Yes.

Q. (By Mr. Merrick): Now, Mr. Gordon, referring to General Counsel's Exhibit No. 5, is this the strike settlement that the membership voted on (hands paper to witness)?

A. Yes, as I remember, that is it.

(Testimony of Frank Gordon.)

Q. Could you explain to us what type of vote was taken in reference to that settlement agreement?

A. Well, I was at several of the meetings, I wasn't at all of them where that was presented, and I will have to admit that I don't remember for sure what method was used in all places.

Q. Well, do you know from your own personal knowledge as to whether or not a vote was taken on this settlement agreement by the membership?

A. Yes, a vote was taken.

Q. And it was accepted by the membership?

A. Yes, it was accepted.

Q. And as a result of this agreement the men returned to work? [44]

A. That is right.

Q. Now, what were your relations with the Company after the return to work? Do you recall any particular grievances arising?

A. Yes, there was a grievance arose shortly after the return to work; one over the re-employment of box factory workers; and one over the employment of some of the railroad employees on the Clearwater Railroad.

Q. Now, what was the dispute regarding box factory workers?

A. Well, as to whether or not, when they were re-employed, they should be paid their regular rate of pay if they were not replaced on their regular job.

(Testimony of Frank Gordon.)

Q. Yes, and what was the dispute relative to the railroad workers?

A. The dispute there was directly over seniority.

Q. Just what were the facts on that, can you tell the Trial Examiner?

A. The men who had gone through the picket line were given rights by the Company over those who had stayed out on strike.

Q. And what protest was made to the Company?

A. There was a grievance filed in regular form under the contract.

Q. Was it processed?

A. It was processed clear through.

Q. All right. What were the results of these grievances? [45]

A. At the time under the agreement when we had completed all the provisions in the agreement for settling disputes, the only thing left was strike, which was out of the question at the time. An investigation was made at that time as to whether or not an unfair labor practice charge could be filed and it was my understanding that information gained from the Board was to the contrary, until such time as we had gotten our certification from the Board.

Q. In other words, at that time was a representation matter pending? A. That is right.

Q. Well, what was the final result of these grievances regarding the seniority rights for the railroad workers?

A. It was, the Union acquiesced under protest.

(Testimony of Frank Gordon.)

Q. In other words, you felt it was not advisable to strike at the time? A. That is right.

Mr. Merrick: I would like to have the reporter mark for identification General Counsel's Exhibit No. 6 for identification. I think we might have them marked en masse. There is a number of grievance forms. They all relate to the railroad department of the Company.

(Thereupon, the documents above referred to were marked for identification.)

Q. (By Mr. Merrick): Handing you General Counsel's Exhibits [46] 6-A through G for identification, can you identify those particular grievance forms (hands papers to witness)?

A. Yes, I can identify them.

Q. You took part in the various grievance meetings held on these grievances? A. I did.

* * *

Trial Examiner Leff: 6-A through 6-G are admitted.

(Thereupon, said documents were admitted in evidence as General Counsel's Exhibits Nos. 6-A, 6-B, 6-C, 6-D, 6-E, 6-F, 6-G, respectively.)

Q. (By Mr. Merrick): You say, Mr. Gordon, no satisfactory settlement was reached on these grievances as far as the Union is concerned, is that correct? A. That is right.

Q. After these grievances were processed, what were your relations with the Company during the rest of '47 and the early part of '48?

(Testimony of Frank Gordon.)

A. That is, in relation to this?

Q. Contract matters, and so forth?

A. Well, during the remainder of '47 and into '48 we had fairly good relations and got along fairly well under the contract until the curtailment at the mill.

Q. Well, now, in '48 were negotiations commenced in the Spring of '48 looking to the writing of a new contract?

A. Yes, that is right.

Q. Can you tell us about those negotiations?

Mr. Elder: When was this?

Mr. Merrick: In the Spring of '48.

A. Well, the negotiations were opened in the regular manner in accordance with the opening clause of the agreement and after numerous meetings we arrived at a proposed settlement, which was submitted to the membership and accepted.

Mr. Merrick: I would like to have this document which purports to be an agreement between the Potlatch Forests Negotiations Committee and the Northwest Regional Negotiating Committee, [48] the International Woodworkers of America, marked for identification as General Counsel's Exhibit No. 7.

(Thereupon, the document above referred to was marked.)

Q. (By Mr. Merrick): Is this the particular agreement that you have reference to, Mr. Gordon (hands paper to witness)?

A. Yes, I believe that is the agreement, as I remember it.

(Testimony of Frank Gordon.)

Q. Did that agreement ever result in the signing of a master agreement, a new master agreement?

Mr. Merrick: Maybe we had better get this in, first. I would like to offer this.

Mr. Elder: I would like, Mr. Examiner, to have the opportunity to check this in the same manner.

Trial Examiner Leff: Very well, it will be received subject to the same reservation.

(Thereupon, the document above referred to was admitted in evidence as General Counsel's Exhibit No. 7.)

Mr. Merrick: Do you care to examine General Counsel's Exhibit 7?

Trial Examiner Leff: I believe I have already received this, General Counsel's Exhibit 5.

Q. (By Mr. Merrick): Now, as a result of this agreement was any contract entered into between the parties?

A. The Union maintains there was, yes.

Q. Well, the answer is hardly responsive. However, what [49] transpired as a result of that agreement?

A. Well, there was an agreement arrived at after this was drawn up to the effect that Mr. Beardmore would have the agreement typed.

Q. Speak a little louder.

A. (Continuing): Would have the agreement typed and with the interpretations which have been

(Testimony of Frank Gordon.)

presented here formally included and put in such form that it could be given to the printers for printing of a new agreement. When that was completed I was designated to meet with Mr. Beardmore and go over this type copy and, if found to be what we had agreed to, sign it and permit its printing. This, of course, was after it had been approved by the membership.

Mr. Merrick: I would like to have this document which purports to be——

Trial Examiner Leff (Interposing): Excuse me. Was it, in fact, approved by the membership?

A. This document that was presented here a moment ago.

Mr. Merrick: No, he is referring to this (indicating).

Trial Examiner Leff: General Counsel's Exhibit 7, was it?

A. Not in that form. The last exhibit was presented to the membership for acceptance.

Trial Examiner Leff: And was it accepted by the membership?

A. It was accepted by the membership. [50]

Trial Examiner Leff: The last Exhibit is General Counsel's Exhibit 7, that is right.

A. (Continuing): On acceptance of that we were to meet and have it put in the form of print.

(Document marked.)

Mr. Merrick: I would like to have this marked for identification as General Counsel's Exhibit 8.

(Testimony of Frank Gordon.)

The document purports to be a master agreement entered into between Potlatch Forests and the I. W. A., CIO and its various Locals. The date of this agreement is the first day of April, 1948.

Q. (By Mr. Merrick): Now, handing you General Counsel's Exhibit No. 8 for identification, Mr. Gordon, is this the agreement that Mr. Beardmore was to send to you?

Mr. Elder: I object to the question. He asked him if it was the contract that Mr. Beardmore was to send to him.

Q. (By Mr. Merrick): Is that the particular contract that Mr. Beardmore sent to you?

A. I believe this to be a copy of the agreement; that this was presented to me in person by Mr. Beardmore.

Q. Was that agreement ever adopted by the membership? A. No.

Q. Why not?

A. The procedure under our method of negotiations, the agreement or proposal as set forth by the committees is what is accepted by the membership and it is the duty of the officers to see that when the agreement is drawn up it conforms with what the [51] membership has voted on.

Q. Well, was that agreement ever adopted by the membership? A. No.

Q. Why not?

A. Because there was an addition made to it.

Q. Would you point out where that addition is on the particular agreement?

(Testimony of Frank Gordon.)

A. It's on the end of the seniority agreement.

Q. What page is that found on?

A. It's on Page 18 of this agreement. Shall I read it?

Q. Yes, would you read what additional addition was made?

A. (Reading): "The strike settlement of October 12th, 1947, shall control application of the seniority article."

Q. And what was the Union's contention regarding that particular provision?

A. That no mention had been made of the strike settlement during negotiations.

Q. So, you refused to sign it?

A. That is right.

Mr. Merrick: I would like to offer General Counsel's Exhibit 8 in evidence.

Mr. Elder: No objection.

Trial Examiner Leff: General Counsel's Exhibit 8 is admitted.

(Thereupon said document was admitted in evidence as General Counsel's Exhibit 8.) [52]

GENERAL COUNSEL'S EXHIBIT No. 8

Master Agreement

This master agreement entered into effective this 1st day of April, 1948, between Potlatch Forests, Inc., hereinafter known as the Company, and Local No. 358, Pierce, Idaho; Local 361, Elk River, Idaho;

(Testimony of Frank Gordon.)

Local 119, Coeur d'Alene, Idaho; and Local 364, Lewiston, Idaho, International Woodworkers of America affiliated with the Congress of Industrial Organizations, hereinafter known as the Union.

* * *

Witnesseth

Article 1—Recognition

The Company recognizes the Union as the sole collective bargaining agency for its production and maintenance employees as certified by the National Labor Relations Board, from the results of the election held March 10 and 11, 1948. It agrees to negotiate with a committee selected by these employees who are members of said International Woodworkers of America, Local 358, Pierce; Local 361, Elk River; Local 119, Coeur d'Alene; and Local 364, Lewiston, their representatives or agents.

Interpretation:

Article 1—Recognition—the first sentence of the first paragraph means the Union is recognized as the bargaining agent for the employees as certified by the National Labor Relations Board for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment as covered by this agreement.

* * *

Received in evidence July 11, 1949.

(Testimony of Frank Gordon.)

Q. (By Mr. Merrick): After this agreement was rejected, Mr. Gordon, what were the relations between the Union and the Company during the remainder of '48 and '49?

A. Well, with the exception of that one particular issue, super-seniority, the contrast was followed out.

Q. What contract are you referring to, now?

A. The one that is marked 1946, with the interpretations thereto.

Q. Did you continue to process grievances between employees and the Company?

A. Yes.

Q. Did you follow the regular grievance procedure set out in the old contract?

A. That is right.

Q. Did the Company at any time contend that the contract no longer applied?

A. Not in any grievances that I remember of.

Trial Examiner Leff: How about the wage scale? Did the Company pay the new wage scale?

A. Yes.

Q. (By Mr. Merrick): Is the Company continuing to recognize the agreement regarding the issue of leaves of absence to the men?

A. Yes.

Q. Is that being done right up to the present date? A. Yes. [53]

Q. Have they ever contended that they do not have to issue leaves of absence? A. No.

(Testimony of Frank Gordon.)

Q. Do the men still get vacations according to the old agreement? A. Yes.

Q. Does the Company still continue to contact you before vacations are given? A. Yes.

Q. What is the procedure that is followed in setting vacations for the men?

A. The procedure that has been followed, that was followed this year which is fresh in my mind: the Company sent a proposal to the Union of their wish as to the date and the Union acted upon it.

Q. And it was adopted by the Company?

A. Yes.

Q. How about the hours of labor in the old contract, are they still adhered to? A. Yes.

Q. Is time and a half still given for work over eight hours? A. Yes.

Q. Does the Union still have shop stewards at the Respondent's mills? A. Yes. [54]

Q. Do they continue to process grievances?

A. Yes.

Q. Does the Company deal with them as shop stewards? A. Yes.

Q. To your knowledge has there ever been any contention that these men no longer have authority to act as shop stewards? A. No.

Q. Referring to General Counsel's Exhibit No. 2, which is the master agreement of '46, referring to Article X classification, is that still followed by the Company, Article X? (hands paper to witness)

A. Yes, it is in accordance with the interpretations of that agreement rendered at that time.

(Testimony of Frank Gordon.)

Q. What rates of pay are paid out there? Do they still follow the rate of pay as set out in the original contract?

A. As far as the Union knows, they do, yes.

Q. Now, referring to General Counsel's Exhibit No. 7, numeral one, that 12½ cent per hour wage increase was that granted to the men this year (hands paper to witness)?

A. Well, those, this was 1948?

Q. Yes. I say, was that wage increase granted?

A. Yes.

Q. Did the Company at any time contend they didn't have to pay it? A. No. [55]

Q. How about this interpretation regarding vacations, has that been followed by the Company?

A. Yes, it has. [56]

* * *

Q. (By Mr. Merrick): Does the Company still continue to follow the policy of allowing the Union to pick an optional holiday, as per the contract?

A. Yes.

Q. Was that followed this year? A. Yes.

Q. Can you tell us the events surrounding that, how it is done, and so forth?

A. Well, the mill took the opportunity of notifying the Company for Decoration Day and did so in accordance with the contract [57] and observed Decoration Day as a holiday this year.

Q. Would you point out the article of the contract that you have reference to, Article Six? (hands book to witness) A. It's Article Six.

(Testimony of Frank Gordon.)

Q. And the Company gave you the holiday you picked? A. Yes.

Q. Now, referring to the logging operation, did they get a holiday?

A. No, because they failed to avail themselves of notifying the Company in time and, consequently, they worked that day regular time at straight time.

Q. Yes. Now, have you continued to precess grievances with the Company during this period?

A. Yes.

Q. Do you take part in those grievances yourself? A. Many of them.

Q. How many have you taken part in during the last year?

A. Oh, I don't know exactly, probably, twenty-five or thirty.

Q. Who do you usually meet with on these grievances proceedings?

A. Well, it depends a lot at what level those grievances are taken where they are settled. In the woods grievances I am generally called into them when they get up to the superintendent's level, and I meet with the woods superintendents and there is times when I have met with the woods foreman.

Q. Regarding the Clearwater operation, who do you usually meet [58] with down there?

A. Well, with the Superintendents' Committee. The Foremans' Committee, I guess, is the first one I have been called in on at any time.

(Testimony of Frank Gordon.)

Q. At any time has the Company refused to negotiate grievances with you?

A. No, not when it was in line with the agreement. [59]

* * *

Q. (By Mr. Merrick): Anyway, in the settling of grievances you follow the contract, is that correct?

A. That is right.

Q. And there has never been a contention by anyone that they should be processed in any other manner?

A. No.

Q. Now, did you enter into negotiations with the Company this Spring, that is, 1949, looking to the writing of a new collective bargaining agreement?

A. Yes.

Mr. Merrick: I would like to have this marked for identification as General Counsel's Exhibit 9 for identification.

(Thereupon the document above referred to was marked for identification.)

Q. (By Mr. Merrick): Now, Mr. Gordon, handing you General Counsel's Exhibit 9 for identification which purports to be a letter [62] from Potlatch Forests to the various Locals notifying of the intention to negotiate a written agreement, did your negotiations commence as a result of receiving that communication from the Company (hands paper to witness)?

A. Yes, they did.

Mr. George: What is the date of that?

Mr. Merrick: January 28th, 1949.

(Testimony of Frank Gordon.)

Q. (By Mr. Merrick): Well, what were the results of those negotiations?

Mr. Elder: Just a moment.

Mr. Merrick: Oh, pardon me.

Mr. Elder: Did you receive this, Mr. Gordon?

A. I didn't receive it. I saw copies of it.

Q. (By Mr. Merrick): What were the results of these negotiations, Mr. Gordon?

Trial Examiner Leff: Well, we haven't ruled on the admissibility of that. Is there any objection?

Mr. Elder: We have no objection.

Trial Examiner Leff: General Counsel's Exhibit No. 9 is received. All right, proceed.

(Thereupon the document above referred to was admitted in evidence as General Counsel's Exhibit No. 9.)

Q. (By Mr. Merrick): What negotiations took place?

A. Well, there were several meetings and at the present time the negotiations are recessed and the calling of a future [63] meeting is in the hands of the U. S. Conciliation Service.

Q. In other words, negotiations have been broken off?

A. No, they are recessed, is all, and pending the calling of another meeting by the U. S. Conciliation Service.

Q. Well, were the parties able to work out any sort of a tentative agreement?

A. We never did agree yet, no.

(Testimony of Frank Gordon.)

Q. Well, what is the particular disagreement?

A. The particular disagreement is the Company's insistence on the inclusion in that contract of a clause giving super-seniority to those who came through the picket lines during our strike.

Q. Was this ever put in any form of writing, this return to work policy?

A. I don't know what you refer to there.

Q. Did the Company ever give you any copy of what their interpretation of the return to work policy was?

A. Well, there was a copy presented to the U. S. Conciliator at our last meeting of negotiations.

Q. Were you present at that meeting?

A. Yes, I was.

Mr. Merrick: I would like to have this document marked as General Counsel's Exhibit 10 for identification. It is entitled "Potlatch Forests, Inc., Return to Work Policy," dated October 12th, 1947.

(Thereupon, the document was marked.) [64]

GENERAL COUNSEL'S EXHIBIT No. 10

October 12, 1947.

Potlatch Forests, Inc.—Return To Work Policy

Employees who returned to work October 13th to 22nd inclusive, 1947, will in case of curtailment, be laid off ahead of employees who returned to work or were hired on or before October 12, 1947 (settlement date). The order of layoff in each group will

(Testimony of Frank Gordon.)

be based on each persons previous seniority rights.

Employees who returned to work on or before October 12, 1947, re-established their previous seniority for all purposes. Employees who returned to work October 13 to October 22, inclusive, 1947, re-established their previous seniority for purposes of curtailment as among this group (returned October 13 to 22, incl.), and for training and promotion among all groups.

Employees who returned to work on or before October 22, 1947, but whose jobs had been filled while they were on strike will be given an opportunity to return to their old jobs at the first opening occurring. If this opportunity is passed up then the employee's rate will revert to the rate of the job he holds and he will have no further right to return to his old job.

When an employee, who is on a job convenience rate, is offered a job equal to or paying more than his old job's rate and this opportunity is passed up the employee's rate will revert to the job he holds but shall be given an opportunity to return to his old job when it is open. If he passes up the opportunity he will have no further right to return to his old job.

When an employee, who is on a job convenience rate, is promoted to a higher paying job and then there is a curtailment he returns to the job his seniority entitles him to and at that job's rate—not at the job convenience rate from which he was promoted.

(Testimony of Frank Gordon.)

Employees who returned to work on or before October 22, 1947 will retain all previous seniority rights for purposes of training and promotion.

Former employees who returned to work after October 22, 1947, will be classed as new employees.

POTLATCH FORESTS, INC.

.....

IWA-CIO

.....

Attest:

U. S. CONCILIATION SERVICE

Received in evidence July 11, 1949.

Q. (By Mr. Merrick): Handing you General Counsel's Exhibit 10 for identification, is this the particular return to work policy that you received from the Company (hands paper to witness)?

A. I believe that to be a copy of what was handed to the Conciliator.

Q. And that copy was never signed by anyone? This is the copy that you got from the Conciliator, is that correct?

(Testimony of Frank Gordon.)

A. Well, I am not sure whether that is a copy or not. There was no signature on the one that I saw, as I remember it. I know there was no Union signature.

Q. Well, do you know what the source of that copy is? A. The Company. [65]

* * *

Trial Examiner Leff: Can the Company agree or stipulate that that was a document which was handed either to the Union or to the Conciliator for transmission to the Union?

Mr. Elder: All right, we so agree.

Trial Examiner Leff: Very well. And that was done on or about October 12th, 1947?

A. No.

Q. (By Mr. Merrick): When did you first see a copy of that [66] return to work policy, Mr. Gordon?

A. At our last negotiations in 1949.

Q. Is that the first time that you saw any written document relative to it? A. No.

Trial Examiner Leff: Well, the record or, at least, the Examiner is confused at this point. Mr. Elder, when you stipulated that this was a copy of the document handed to the Conciliator for transmission to the Union did you have any date in mind when that was done?

Mr. Elder: In 1949.

* * *

Mr. George: Is the record clear on that?

Trial Examiner Leff: Well, the record shows

(Testimony of Frank Gordon.)

that this document, General Counsel's Exhibit No. 10 was handed by the Company, the Respondent, that is, to a conciliator for transmission to the Union during negotiations in 1949. What month in 1949, can you tell us? [67]

A. June, I think.

Trial Examiner Leff: In June of 1949?

A. Yes.

Trial Examiner Leff: What was pending in June of 1949? Were negotiations pending between the Potlatch Forests and your Union?

A. Yes, we were still in negotiations before the United States Conciliation Service.

Trial Examiner Leff: I see.

Q. (By Mr. Merrick): This was the first time that you had ever seen a written copy of this policy?

A. Yes.

Q. Is this why the negotiations were broken off, the dispute over the return to work policy?

A. That is why they were recessed to a further meeting.

Q. Going back to January, '49, do you recall processing a grievance involving Mr. Gail Cloninger?

A. Yes.

Q. Could you give us the events surrounding that grievance procedure and what part you took in them?

A. Well, that was brought about by the curtailment in some of the departments in the mill and Clearwater Unit, that is, I mean in the Clearwater

(Testimony of Frank Gordon.)

Sawmill Unit. Speaking of the Clearwater Sawmill Unit I am speaking of the whole plant, the whole unit, and there were some of the departments curtailed for a [68] time and Mr. Cloninger was, in the opinion of the Union, discriminated against because his full seniority had not been recognized as compared to that of a man who had gone through the picket line.

Mr. Merrick: I would like to have this document marked for identification as General Counsel's Exhibit No. 11. It purports to be a grievance complaint form bearing date of January 3rd, 1949, relating to the Carpenters' Department.

(Thereupon said document was marked for identification.)

Q. (By Mr. Merrick): Mr. Gordon, handing you General Counsel's Exhibit No. 11 for identification, is this the grievance that you processed (hands paper to witness)? A. Yes, it is.

Q. Could you describe just what those various steps are that are named on that grievance form?

A. Well, the first step is taken up with the person, individual, or the individual and a representative of the Union with his immediate foreman. The next step is the shop steward, the employee and the shop steward.

Q. That is step two that you are referring to?

A. That is step two, with the foreman. And in step three it is the shop steward and Foremans'

(Testimony of Frank Gordon.)

Committee and it has been the practice here of both the Company and the Union to bring in other representatives into that at that point if they thought it would help in settlement of the grievance. And step four is the shop committee and the local superintendents' committee.

Q. And what is the final step?

A. The final step is before the U. S. Conciliation Service.

Q. And what was the result of this, the processing of this grievance?

A. Well, we failed to get any settlement.

Q. What decision was reached?

A. A decision was reached to permit the Company to put these men to work under their interpretation with the Union protesting its validity.

Q. Now, referring to step four of General Counsel's Exhibit 11 for identification, it is typewritten here: "Agreed that Cox has seniority over Gail Cloninger due to Cloninger's return to work on 10/14/47," who put that clause in the agreement? The form?

A. The Company.

Q. Did you agree to that?

A. We agreed to that with the stipulation on the other page.

Q. Is that what the word "over" refers to on the bottom of this form?

A. Yes.

Mr. Merrick: At this time, Mr. Trial Examiner, I would like to offer in evidence General Counsel's Exhibit No. 11.

(Testimony of Frank Gordon.)

Mr. George: You are offering it as an exhibit?

Mr. Merrick: I am offering it, now.

Mr. Elder: No objection.

Trial Examiner Leff: General Counsel's Exhibit No. 11 is received.

(Thereupon the document above-referred to was received in evidence as General Counsel's Exhibit No. 11)

Q. (By Mr. Merrick): Incidentally, regarding this particular grievance, at any time did the Company maintain that that they need not process that grievance? A. No.

Q. And how was it processed?

A. The regular way, in accordance with the agreement.

Q. Are those the steps set out in the agreement?

A. Yes.

Q. Now, Mr. Gordon, in your association with the local office of the I.W.A. has it always been the policy of this Local to vote on contracts?

A. Yes.

Q. Do you vote on any contract changes ever made?

A. Yes, anything that changes the general contract.

Q. And how was the membership notified that there is going to be a vote on a particular contract provision?

A. There is written notice put up on bulletin boards around the mill.

(Testimony of Frank Gordon.)

Q. Those notices are put up in the mill? [71]

A. Yes.

Q. Put up in all departments? A. Yes.

Q. And was there a vote on the strike settlement in 1947? A. Well, now of course——

Q. (Interposing): Strike that. I will withdraw the question, I have asked that already.

* * *

Trial Examiner Leff: Did you agree that Cox had seniority [72] over Cloninger on this particular grievance?

A. On that particular grievance we agreed to allow that particular procedure to be used in that particular agreement rather than to strike. That was practically the only thing we could do outside of that, but we retained the right by the statement on the back of that sheet to object to any such use of seniority.

Trial Examiner Leff: You mean, in the future?

A. Yes.

Q. (By Mr. Merrick): You did not acquiesce there?

A. We didn't even acquiesce there, that it was right. We agreed to let it go at that time and the general discussion was to the effect that the only way that that could be determined is through a hearing of this kind, that the Board would have to decide that. [73]

* * *

(Testimony of Frank Gordon.)

Examination

By Mr. George:

Q. Frank, how long have you been a member of the I.W.A. A. Since 1937.

Q. When I first knew you, you were a member of the Columbia Ridge District Council, that is District 5? A. Yes.

Q. And you were an officer at that time?

A. Yes.

Q. And, then, you left there and went to the War Labor Board and were back in with the I.W.A. again? A. Yes.

Q. During all that time did you become familiar with their basic way of collective bargaining?

A. That is right.

Q. And is it not a fact that the officers are never delegated with the authority or power to bind a Union until after the matters they have been working on have been resubmitted to the Union?

A. To ratification by the rank and file.

Q. To ratification by the rank and file? [74]

A. That is right.

Q. And has that policy ever varied?

A. Not that I know of.

Q. Now, since you have been over in this area and in your dealings with Potlatch Forests, Incorporated, has there been any variation of that policy?

A. No.

Q. And the Company is thoroughly aware of that method of conducting your negotiations?

(Testimony of Frank Gordon.)

A. Yes.

Q. Now, back to the question you testified to this morning in regard to this so-called strike settlement agreement, was that matter submitted to the rank and file for agreement, for ratification?

A. Yes. [75]

* * *

Trial Examiner Leff: Would you please identify this strike settlement agreement.

Q. (By Mr. George): Yes, I am referring in particular to General Counsels' Exhibit No. 5?

A. Yes.

Q. Now, Frank, has there ever been any other matter submitted to the rank and file covering the topic of seniority? Has there ever been such an agreement submitted to the rank and file to vote on, bearing on the subject of seniority in any form?

A. No. [76]

* * *

Q. (By Mr. George): Frank, will you tell me what Paragraph 5 refers to in that strike settlement agreement (hands paper to witness)? Read it, first, and then, tell me what it refers to? Read it out loud.

A. (reading): "The present contract will remain in effect without change except that the following is substituted for the fourth paragraph in Article VII." That refers to, I don't know what the number is, it is that exhibit there (indicating), the 1946 contract.

(Testimony of Frank Gordon.)

Trial Examiner Leff: You are referring to General Counsel's Exhibit No. 2?

A. No. 2. [77]

Q. (By Mr. George): Then, there was a contract in existence at that time? A. Yes.

Q. Now, have you submitted to the membership by referendum vote since this thing was signed, this copy that you hold in your hand, any modification of the contract, any changes?

A. Yes, there was the settlement of 1948 negotiations.

Q. I see, but at that time it had to be changed by the vote of the membership? A. Yes.

Q. So you haven't varied from that policy down to the present time, any change in the contract must be ratified by the rank and file before it becomes binding? A. That is right.

Q. I believe you testified that there has never been any super-seniority clause of any type submitted to the rank and file for ratification?

A. Yes.

Q. Now, at the time this strike settlement was being voted on did that paper embody the full matter on which the members were voting? [78]

* * *

Trial Examiner Leff: Were you present when it was voted on? A. Yes.

Trial Examiner Leff: You may answer the question. The objection is overruled.

A. Yes, it embodied the whole thing. It was presented to the membership for their vote.

(Testimony of Frank Gordon.)

Q. (By Mr. George): There was nothing else other than what was on that paper that the members voted on? A. Yes.

Q. Now, just before dinner you were testifying about this discrimination of Mr. Cloninger's, is that his name? A. Cloninger, yes.

Q. You were testifying about this discrimination of Cloninger's and it wasn't clear to me as to what you said in regard to your negotiations with the Company. Now, correct me if I am wrong in this statement: if I understand your testimony you testified this morning that he filed a grievance, that you took this grievance up and you and the Union, I mean, you and the Company could not reach an agreement on it, is that correct? [79]

A. That is right.

* * *

Q. (By Mr. George): Supposing you just tell us in your own words, now, what the facts are in regard to how you left this matter with the Company of Mr. Cloninger?

A. Well, we couldn't agree with the Company's interpretation of the strike settlement as it affected seniority and it was our understanding and definitely understood there that there was no purpose in carrying this to the final point in the agreement and it was left and agreed there that the only way it could be settled is through a Labor Board Hearing, and we just agreed not to carry it any further until such a hearing could be held.

(Testimony of Frank Gordon.)

Q. Let me have this clear: at any time have you ever agreed that the Company could impose their idea of seniority, this super-seniority, as part of the contract? [80]

A. No. [81]

* * *

Cross-Examination

By Mr. Elder:

Q. Mr. Gordon, I hand you Exhibit No. 11 (hands paper to witness) and ask you who signed that grievance on behalf of the Union, the settlement of the grievance?

A. That is signed by William Angove, President of the Local.

Q. What is his title?

A. President of the Local Union.

Q. And he actually made the settlement, William Angove?

A. He was the one that signed that.

Q. Did he participate in the settlement?

A. He did.

Trial Examiner Leff: Is he President of the Local at this time?

A. Yes, he is.

Q. (By Mr. Elder): And he actually made the settlement with the Company, Mr. Angove?

A. There was a committee in on this.

Q. And that settlement is what the committee reached as it was signed by Mr. Angove, as President of the Union?

(Testimony of Frank Gordon.)

A. Yes, that is the settlement, with this codicil at the end of it here.

Q. Now, referring you again to General Counsel's Exhibit No. 5, which is the proposed settlement which has been referred to, you say that it was submitted to the Locals and voted on and that you were present at those meetings, is that right?

A. Yes, not all of them. I was present at part of them.

Q. What Local Meetings were you present at?

A. I was present at the Local 364, at 119; at, I think, those two.

Q. And do you know whether the other two approved it? A. Yes, I know.

Q. And before this settlement was agreed upon all of the Local Unions had to approve it?

A. That is correct, yes.

Q. How did they actually go about approving this at the meeting that you attended? Who read it to them or did you read it to them or did you pass it around to them or how did they know what this settlement agreement was all about?

A. It was read in full. Then, it was taken paragraph by paragraph and fully discussed.

Q. It was discussed by whom?

A. Those at the meeting.

Q. Did you discuss it?

A. I don't know as I did. I sat there and listened to the discussion.

Q. Well, who led the discussion at the meetings which you attended? A. Who led?

(Testimony of Frank Gordon.)

Q. Well, who told them about it, the membership? A. Mr. Botkin. [83]

Q. And Mr. Botkin, to your knowledge was he present at the settlement agreement at the time this was settled? A. Yes.

Q. And he told them what the settlement was all about? A. That is right.

Q. You were not present at any of the meetings where the settlement was reached?

A. No.

Q. When did you first find out about the strike settlement agreement?

A. It was presented to the strike committee very shortly after it was handed to Mr. Botkin and Eggers.

Q. That would be about October 13th, or October 12th, I mean, 1947?

A. I presume, I wouldn't say.

Q. To refresh your memory the men went back to work October 13th, which was Monday?

A. I presume it was the 12th, yes, the twelfth day.

Q. Referring to the exhibit which you have in your hand, which is Exhibit No. 5 of the General Counsel and calling your attention to Paragraph II, in the second sentence in Paragraph II, which reads: (reading) "In the event the job formerly held by the returning employee is not open, the employee will be given other work and receive pay on the basis of the rate paid on his former job." When Mr. Botkin explained that and it was [84]

(Testimony of Frank Gordon.)

discussed at your Union meeting, how did they explain, what did that sentence mean?

A. It meant just what it says.

Q. Well, what does it say, in your opinion? I mean, what do you think this means?

* * *

A. Well, I don't remember what was said in respect to that. It is there. I don't know what could be said other than just what is says there.

Q. (By Mr. Elder): At the meeting was the question of seniority discussed? A. Yes.

Q. Did anyone question you or Mr. Botkin as to why the question of seniority was not expressly mentioned in the agreement?

A. That is right.

Q. What did they say to that?

A. It wasn't necessary with what it said in the first part of [85] Paragraph 2. [86]

* * *

Mr. Elder: Well, that is a matter that we are going to argue out later. I was just trying to bring out, and I think it has been established, that no agreement was signed as a result of Exhibit No. 3.

Mr. Merrick: I will concede that there was no other master [91] agreement executed since this one in 1946. That is May 7th, I believe, that one.

Trial Examiner Leff: May 28th.

Mr. Merrick: May 28th is the 1947, it's the next year, I believe.

Trial Examiner Leff: All right, let's refer to it here.

(Testimony of Frank Gordon.)

Mr. Merrick: That is the Negotiating Committee report, May 28th.

Q. (By Mr. Elder): Could you tell me, Exhibit No. 4, General Counsel's Exhibit No. 4 is signed as far as the Northwest Regional Negotiating Committee is concerned, by Ellery Foster, Council Committee, who is that?

A. Ellery Foster was the head of the Educational Department of the International Woodworkers of America at the time that negotiations were published.

Q. And Ray Lea (spelling): L-e-a, what capacity is he?

A. He was a member of the Northwest Regional Negotiating Committee of the International Woodworkers.

Q. And O. D. Armstrong, what position did he hold?

A. He held the same position.

Q. Are they residents of Lewiston or do you know where they live?

A. No, Ray Lea was from District 7. Each district had a representative or an alternative on the Committee.

Q. And Pete Nelson? [92]

A. Just a minute. Mr. Armstrong was from District 10. Pete Nelson, which this is his district here, and Pete Nelson is from District No. 2, which is the Northern Washington District.

Q. What District? A. District No. 2.

Q. Where does that cover?

(Testimony of Frank Gordon.)

A. Northern Washington District Council.

Q. And the Northern Washington Council includes Northern Idaho, does it?

A. No, District 10 includes Northern Idaho.

Q. And Armstrong represented District 10?

A. That is right.

Q. Now, calling your attention to Exhibit No. 3, General Counsel's Exhibit No. 3, the signature appearing on there on behalf of the Union is Fred Seifkin, this is dated the 7th day of May, 1947?

A. He was at that time Secretary-Treasurer of District No. 10.

Q. And Frank Gordon?

A. That is myself.

Q. And Harry Lee?

A. Harry Lee was an alternate, I believe. Anyway, he was from the same district as Ray Lea on the International Northwest Regional Negotiating Committee and was alternating for Ray Lee at this particular time, I understand.

Q. And Chauncey Knoll? [93]

A. Chauncey Knoll at that time was Financial Secretary and Business Agent of Local 364 here in Lewiston.

Q. And William Schwartzman?

A. William Schwartzman was the Secretary-Treasurer of Local 361,—

Q. (interposing): And Hugo—

A. (continuing): Potlatch.

Q. Excuse me. Hugo Wachsmuth?

A. Hugo Wachsmuth was a representative, was representing Local 119, of Coeur d'Alene.

(Testimony of Frank Gordon.)

Q. And Frank Jennings.

A. Frank Jennings.

Q. Yes, sir.

A. He was, I believe, Business Agent at that time of Local 358, at least, he was representing 358 on the Committee.

Q. In other words, Mr. Gordon, all of the Locals were present at the meeting when these interpretations were agreed upon, is that right?

A. I believe they were. Of course, the fact that their signatures are on there doesn't mean that they might have all signed at that date. I believe probably they were, I don't know. I don't remember.

Q. But, actually, all of them had to agree to it before one of the Locals would agree to it, wouldn't they?

A. I imagine so. [94]

Q. I didn't hear your answer?

A. I imagine so, I don't know. There had to be a majority on that. [95]

* * *

(Thereupon the document above referred to was admitted in evidence as Respondent's Exhibit No. 1.)

RESPONDENT'S EXHIBIT No. 1

Master Agreement

This master agreement entered into effective this 1st day of April, 1945, between Potlatch Forests, Inc., hereinafter known as the Company, and Local No. 358, Pierce, Idaho; Local 361, Elk River, Idaho; Local 119, Coeur d'Alene, Idaho; and Local

(Testimony of Frank Gordon.)

364, Lewiston, Idaho, International Woodworkers of America affiliated with the Congress of Industrial Organizations, hereinafter known as the Union.

* * *

Article I—Recognition

The Company recognizes the Union as the sole collective bargaining agency for its production and maintenance employees as certified by the National Labor Relation Board. It agrees to negotiate with a committee selected by these employees who are members of said International Woodworkers of America, Local 358, Pierce; Local, 361, Elk River; Local 119, Coeur d'Alene; and Local 364, Lewiston, their representatives or agents.

* * *

Received in evidence July 11, 1949.

Q. (By Mr. Elder): I hand you Exhibits Nos. 6-A to G inclusive (hands papers to witness), which you identified this morning as being certain grievances, all of which I believe were in [97] connection with the railroad employees, correct me if that is not the right statement?

A. Yes, that is right.

Q. And I believe this morning you testified that you sat in on those grievances?

A. I sat in at the top level, yes.

Q. Yes, now, you note on there that on those

(Testimony of Frank Gordon.)

grievances it says (reading): "Turned over to Mr. Botkin for Union and Mr. Lauschel for Company." What does that mean?

A. Well, I made those meeting calls at which those two people were present.

Q. Is that the usual procedure to follow in a grievance?

A. Well, not under the agreement necessarily. It was merely agreed to at the last step in the contract that they do that. It was as a follow-up on it, I think.

Q. Wasn't it referred to them, actually, Mr. Gordon, for the reason that Mr. Botkin and Mr. Lauschel were present at the strike settlement and that was why it was referred to them for them to determine whether or not the procedure followed was in accordance with the strike settlement?

A. If it was called up for that purpose.

Q. And that is why you referred it to Mr. Botkin for the Union and Mr. Lauschel for the Company, isn't it?

A. That is right.

Q. Were you present at the conciliation resulting after this [98] reference to Mr. Botkin and Mr. Lauschel?

A. Well, it was my impression that the Conciliation Service got ahold of it, first.

Q. Well, were you present at the conciliation meeting? A. Yes.

Q. And at that meeting what, was the strike settlement agreement discussed?

(Testimony of Frank Gordon.)

A. I presume, I don't remember.

Q. Well, why was there a grievance filed on these men, Mr. Gordon?

A. Well, I think it's there. It tells you why.

Q. Wasn't it because of the return to work policy that the Company was operating on?

A. Yes, because of the way they had treated these particular men.

Q. Under their strike settlement agreement?

A. That is right.

Q. So that at the dates of these grievances as shown on the exhibit you had knowledge of the Company's position as far as the strike settlement agreement was concerned on seniority in the event of a curtailment, didn't you?

A. To some extent.

Q. Well, you knew as far as these people were concerned that that procedure was followed, didn't you?

A. Yes, according to what came out in the hearing it wasn't [99] followed exactly the same on all of them, if I remember correctly.

Q. You testified this morning that as far as seniority is concerned, as far as working conditions were concerned, as far as salary was concerned and as far as vacation was concerned everything remained the same except for this return to work policy of the Company, didn't you?

A. I don't know. I wouldn't say just exactly what my answers were this morning.

Q. Let me ask you this question: in the case

(Testimony of Frank Gordon.)

of the men who came back to work after the strike settlement, in the question of promotion in the plant or in any of the operations of the Company is seniority procedure followed as it was prior to the strike

A. As far as I know, it has been.

Q. In Exhibit No. 10 (hands paper to witness), which you testified this morning was to be the return to work policy of the Company, isn't that actually the policy that was followed by the Company in all of these grievances that you have referred to this morning?

A. Well, it's just about the policy, somewhat along these lines.

Q. As a matter of fact, Mr. Gordon, you and the Union have known about this ever since the strike settlement was made that this was the policy that the Company was following, haven't you?

A. We knew that they were following a policy similar to that [100] but they did not follow it in all cases.

Q. What cases didn't they follow that in, that you know of?

A. Oh, gee, I can't call the fellow's name.

Q. Can you give me one?

A. No, I can't call the name. I can get it for you but I haven't got it right here.

Q. But in the majority of instances they followed this policy, didn't they, where there has been a curtailment?

A. Well, I would have to read this thing over. This thing is so long and involves so many things

(Testimony of Frank Gordon.)

that, actually, a lot of things in here the question has never arisen. This, in general, is about what the, during a long period of time the Union surmised that it might be, a policy similar to this, but there has absolutely never been a different statement made to the Union at any time as to exactly what the Company's policy was. There was hints and threats and everything else but never at any time did they come right out and say what the Company policy was and they kept the Union in doubt at all times.

Q. Going back to the conciliation of the railroad grievance, wasn't the policy of the Company stated at that meeting to the effect that men who had gone back to work after the settlement would not replace the men on their jobs that had taken them prior to the settlement in the event of a curtailment?

A. Would you restate that again?

Q. I said, wasn't at this meeting referring to the railroad [101] grievances set up in Exhibit No. 6, at that conciliation meeting wasn't the policy of the Company stated by the Company at that meeting as far as seniority in the event of a curtailment was concerned?

A. I don't remember that it was. I don't remember what the statement was, so, I don't remember whether it would conform to that one or not.

Q. Was there any discussion at that meeting that men who had come back after the strike would not displace a man who had been there taking his job

(Testimony of Frank Gordon.)

prior to the strike, prior to the settlement of the strike?

A. There was. We understood that he would not replace him when he came back to work.

Q. Well, at this meeting, this conciliation meeting when you were objecting to that very thing, didn't the Company state that their policy was that where a man had come back and taken a job on the plant that he wouldn't be displaced by a man who came back after the settlement?

A. There was a settlement made as to these people here in the camps, yes.

Q. Wasn't that the whole argument in that conciliation?

A. It was at that time.

Q. You say that you understood that when a man that had come back prior to a settlement and taken a job, that when the man came back after the settlement he was not to replace that man, [102] you say you admitted that, you knew that?

A. Well, it says so right in your agreement.

Mr. Merrick: I object. I mean, the agreement will speak for itself, as to what the settlement was, as to who will get jobs, and so forth.

Mr. Elder: We again take issue with that in that we do not claim that this memorandum or proposed memorandum, which was not even executed, is the entire settlement agreement.

Trial Examiner Leff: There is one thing that I find some difficulty in following and, perhaps, you will straighten it out before the hearing is over: I

(Testimony of Frank Gordon.)

can't understand how you can have any replacement situation at all. Suppose you have two men, both have been employees, then, they go out on strike together; one comes back before a certain date and the other remains out until after the end of the strike. The one who comes back early, it seems to me, takes his old job back. There is no question of replacement, he doesn't replace the man who is still out.

Mr. Merrick: There were some other employees hired, hired, however, during the strike.

Mr. Elder: There were some other employees hired, which is an issue, also, but the settlement agreement, as we will attempt to prove it, provided that the employees who came back and took their jobs or took other jobs, in other words, the mill had to operate, the setters and sawyers, those jobs had to [103] be filled in order for the plant to operate. The agreement was that those men who took those jobs at the time we settled the strike, it was agreed that those men who had taken the jobs would not be replaced. That is the whole argument. There now comes along a curtailment. The Union admitted, apparently, here by Mr. Gordon that they knew that those men could not be replaced but they now say that where a curtailment comes, why you can be replaced. It is our contention that the agreement was that those men could not be replaced by the men who were coming back to work under the agreement.

Trial Examiner Leff: As of what time, as of the

(Testimony of Frank Gordon.)

curtailment of the strike? I mean, isn't that the time that the displacement would have to take place?

Mr. Elder: No, we are agreeing under the settlement they were withdrawing their pickets and permitting these men to come back to work. The agreement was that those men who were coming back to work would in no wise displace the men who had come back earlier and were operating in the mill. There was an agreement that the wages would remain the same, that the setters who would take some job that was filled, his job was still open but he would take some other job at a setter's wage.

Mr. Merrick: Mr. Examiner, if you recall in Respondent's opening statement, I questioned specifically regarding the settlements of the two employees named in the complaint. I think he stated at that time there was no issue at the time as to the [104] fact that they were reinstated at that time on October 13th.

Trial Examiner Leff: On their old jobs?

Mr. Elder: Not reinstated.

Mr. Merrick: Regardless of that, we will prove it.

Trial Examiner Leff: That is, I wanted to have developed, take, for example, these two people named in the complaint. I would like to know whether when they returned to work after the strike they were given some job other than the one they originally held or whether they were given the job which they held prior to the strike. I think that will clear up the situation for me.

(Testimony of Frank Gordon.)

Mr. Elder: I think that will come out. It can't be brought out from this witness.

Trial Examiner Leff: Yes, very well. I am sorry I interrupted you.

Q. (By Mr. Elder): You testified this morning about the grievance of Mr. Cloninger. The other man in the charge is Walters. Why was no grievance filed on Mr. Walters?

A. Well, there was no necessity of filing any charge on Mr. Walters and we had found that it was useless, so, we just simply added that complaint.

Q. What do you mean, it was useless?

A. Well, judging from what we talked over on Mr. Cloninger's case.

Mr. Merrick: Are you taking the position, now, that there [105] is a contract in existence, I mean, that there was a contract in 1948 and '49?

Mr. Elder: No, I am just cross-examining him in reply to testimony that you brought out.

Trial Examiner Leff: This hearing would be much more orderly if you would address all remarks to me rather than engaging in colloquy with counsel. Just, please, proceed with the cross-examination.

Q. (By Mr. Elder). Did you follow any of the grievance procedure as far as Walters was concerned? A. No.

Q. No grievance was filed on Walters?

A. I don't believe there was anything filed on him, I am not positive.

Q. One other question, Mr. Gordon: you identi-

(Testimony of Frank Gordon.)

fied this morning Exhibit No. 9 as being a letter from the Potlatch Forests, Inc., to the several Locals and the International opening up the written agreement of April 1st, 1946, as modified. Do you know whether or not the Union, also, opened up that agreement by notification to the Company?

A. Well, of course, I didn't have anything to do with that. I think, I know they did but, then, I didn't have the doing of it.

Q. In other words, both the Company and the Union notified each other that they wanted the opening of the contract? [106]

A. Yes, I think so.

Mr. Merrick: I can't find the letter, I think I will stipulate that it was opened.

Q. (By Mr. Elder): I hand you Exhibit No. 8 (hands paper to witness) which is the master agreement which you claimed this morning was submitted to you which you testified that it was never signed. After that was submitted to you, did you have any meetings between the Union and the Company regarding that agreement? A. Yes, we did.

Q. And were you able to reach any agreement on it?

A. It's my remembrance that we didn't reach any agreement on it at all, that is, on that particular part that we objected to.

Q. And, therefore, no agreement of that type was ever signed between the Union and the Company?

A. In this form?

(Testimony of Frank Gordon.)

Q. Yes. A. No.

Q. Well, no agreement in any form was signed after that, was there?

A. Not after this, no.

Mr. Elder: That is all.

Mr. Merrick: My witness? [107]

* * *

GAIL CLONINGER

called and sworn as a witness on behalf of the National Labor Relations Board, testified as follows:

Direct Examination

By Mr. Merrick:

Trial Examiner Leff: What is your full name?

A. Gail B. Cloninger.

Q. (My Mr. Merrick): What is your address, Gail? [109]

A. 1315 Twelfth Street, Lewiston.

Q. Will you speak a little bit louder, too. What is your present occupation, Gail?

A. Truck driver's helper.

Q. And you are employed at Potlatch?

A. Yes.

Q. How long have you worked for Potlatch Forests? A. I started July 24th, 1940.

Q. And what was your job when you first started? With them?

A. I was helper in the box factory.

(Testimony of Gail Cloninger.)

Q. And how long did you stay on that job in the box factory?

A. From July 24th until Army induction in December, the 31st, 1941.

Q. And, then, when did you come back to Potlatch? A. August, '43.

Q. Was that when you were discharged from the Army? A. Yes.

Q. And what job did you get at that time?

A. Oh, rip saw operator.

Q. In what department?

A. The box factory.

Q. And how long did you stay on that job?

A. September of '46.

Q. And, then, what job did you take?

A. I transferred to my present job. [110]

Q. That is in the Carpenters' Crew?

A. Yes.

Q. And were you in that crew at the time of the strike? A. Yes.

Q. And how long were you out on strike?

A. Sixty-seven days.

Q. You stayed out the whole length of the strike?

A. Yes.

Q. Do you recall what date the strike ended?

A. October 13th, '47.

Trial Examiner Leff: I am a bit confused, what is your present job, you say?

A. Truck driver's helper.

Trial Examiner Leff: Is that the job you hold, now? A. Yes.

(Testimony of Gail Cloninger.)

Trial Examiner Leff: And when did you begin on that job? A. October 13th.

Trial Examiner Leff: This year, of '47?

A. 1947.

Q. (By Mr. Merrick): That job is in what crew?

A. That was assigned to the same crew as carpenters and maintenance, ground maintenance.

Q. It was in the same group that you worked with before, the same department?

A. Yes. [111]

Q. What happened when you came back? How did you go about going back to work after the strike?

A. Well, we were told to report to the employment office for assignment, and I was hired out in the employment office. I took that job and, then, go back to the same department.

Trial Examiner Leff: At the conclusion of your strike when you went back to work you got the same job that you held before the strike, is that right, or was it a different job?

A. In the same capacity.

Trial Examiner Leff: Well, was it the same place? A. The same department.

Q. (By Mr. Merrick): You were still a laborer in the Carpenters' Crew, is that correct?

A. Yes.

Q. What events transpired when you went into the Personnel Office on your first day back? Who did you see and what was said, and so forth?

(Testimony of Gail Cloninger.)

A. I talked to the Employment Manager.

Q. Who is that? A. Bob Burger.

Q. And was he the one that reinstated you?

A. Yes.

Q. Was anything said about seniority at that time?

A. Well, there was a discussion about me and another man for this assignment to this job, and I had more seniority than he did. [112]

Q. Who was the other man?

A. John Shoemaker.

Q. Was he a man that stayed out on strike during the whole strike period?

A. Yes.

Q. In other words, you and he had to see who had the greater seniority to get back on the Carpenters' Crew? Is that correct?

A. That is right.

Q. And you were given that job by Mr. Burger?

A. Yes.

Q. When you went back to work October 13th how long did you stay on that crew?

A. Until the curtailment in the department.

Q. Do you remember what date that was?

A. That was January 30th, 1948.

Q. Well, what transpired when you were laid off? A. Or, rather, December 30th.

Q. December 30th, of '48? What happened when you were laid off, do you recall?

A. Well, we were given the usual, regular layoff slips.

(Testimony of Gail Cloninger.)

Q. Well, who notified you that you were being laid off? A. The foreman.

Q. And who was your foreman?

A. A. L. Jensen.

Q. Well, at any time did Mr. Jensen tell you why you were being [113] laid off?

A. He said there was no work and, then, of course, he laid me off.

Q. Well, was any grievance filed as a result of this? A. Yes.

Q. When was that filed?

A. The following day, December 31st.

Q. Handing you General Counsel's Exhibit No. 11 (hands paper to witness), is this the grievance that you filed? A. Yes.

Q. Now, what was done about this grievance, was a meeting held on it? A. Yes.

Q. When was the meeting held, do you recall? You don't have to be exact on the dates.

A. I think it was January 2nd, '49.

Q. Was it the Monday after you were laid off?

A. Yes.

Q. And who was present at that meeting?

A. Myself and all members here that were in this.

Q. That are named in the grievance?

A. And President Bill Angove and Frank Gordon.

Q. Will you speak a little bit louder. And who was there from the Company?

(Testimony of Gail Cloninger.)

A. A. L. Jensen, we met with him; he was there.

Q. Did you have any conversation with Mr. Jensen that day? A. Yes.

Q. What was the conversation about?

A. We asked him why, how come they were laid off in this manner and he said that is what he was instructed to do.

Q. Did he say who had instructed him to lay you off?

A. He said the employment office.

Q. Did he say anything about strike seniority?

A. Yes.

Q. What did he say?

A. He said, "You fellows haven't got any."

Q. Did he say, "I am laying you off because of that"?

Mr. Elder: I object as a leading question.

Q. (By Mr. Merrick): What did he say about it? Just give us the whole conversation of the strike seniority?

A. Well, we met with the foreman in his office. We asked for this meeting at nine-thirty on that Monday morning, and he said there was nothing he could do about it. The Employment Office told us when we attempted to contact the foreman that it was the foreman's job to look after it, and he said that he would just have to go along with us and take it over to the Employment Office and go into it because it was over his head.

Q. What did he talk about this seniority, now, give us all the details on that, if you can?

(Testimony of Gail Cloninger.)

A. Well, he went into a meeting with the foreman in the [115] Employment Office, went into a meeting with them, and when he came back he said we would have to go through the proper steps, that it couldn't be settled with the employment office here.

Q. When was it that he made the statement about seniority?

A. On that Monday morning.

Trial Examiner Leff: What was the statement again?

Q. (By Mr. Merrick): What did he say?

A. What did he say? He said we didn't have any strike seniority.

Q. That is all he said, then? A. Yes.

Q. Were there any further meetings held on this grievance?

A. Yes, we went in with the Superintendent of Manufacture; he was present.

Q. When was this meeting held, Gail?

A. The same day.

Q. Yes.

A. (Continuing): We asked to go along with it because all us men were waiting to see how this, see what was going on.

Q. Well, did you hold any meetings later on in that week?

A. Yes, we contacted the Plant Manager, Bill Angove, did, and we got a meeting for Wednesday.

Q. Yes.

(Testimony of Gail Cloninger.)

A. That was the 5th of January.

Q. And who was present at that meeting [116]

A. The Plant Manager, the Superintendent of Manufacture, George Beardmore.

Q. Who were these men that were present, now, just identify them?

A. There was George Beardmore and Dave Troy.

Q. What is Dave Troy's job?

A. Plant Manager.

Q. Yes, and who else was present?

A. And Bill Andrews, Superintendent of Manufacture; and Frank Gordon, Bill Angove and myself.

Q. And what was done at this meeting?

A. This discussion was on.

Q. Well, did they give you any reason for your layoff at that time? A. Yes, the same answer.

Q. Well, who gave you this reason, or what was said? Now, what did they say why you were being laid off, do you recall?

A. They said that it was in line with strike seniority.

Q. Who said that? A. Dave Troy.

Q. Dave Troy, and what was his job, again?

A. Plant Manager.

Q. And Mr. Beardmore was present at that meeting? A. Yes.

Q. Was any other reason given why you were being laid off? [117] A. No.

(Testimony of Gail Cloninger.)

Mr. Merrick: Your witness.

Mr. George: No questions.

Cross-Examination

By Mr. Elder:

Q. As I understood your testimony, Mr. Cloninger, you were employed as a truck helper and that is a common labor job, is it? A. Yes.

Q. Carrying a common labor rate?

A. Yes.

Q. And that was prior to the strike you held that job?

A. It was in the same department but I didn't have the same job, but all those labor jobs are in the same bracket. They are optional.

Q. But when you came back after the strike you didn't take the same job that you had before, is that right?

A. I was in the same capacity.

Q. You didn't take the same job?

A. Well, yes, I was on it three or four days before the strike started.

Q. I didn't hear that?

A. There was a man on it three or four days before the strike started and I took his place subject to work anywhere and, then, I was reassigned at that when I went back to work the 13th of October.

Trial Examiner Leff: Will you keep your voice up?

Q. (By Mr. Elder): This may be repetitious but

(Testimony of Gail Cloninger.)

I don't quite understand it: prior to the strike, before you went on the strike you were working as a common laborer, truck driving, is that right, truck driver's helper?

A. Yes, three or four days before I went on strike.

Q. Then, when you came back you took that same job?

A. I was assigned to it, yes.

Q. And all of those jobs, how many jobs were there in the Carpenters' Crew that held the common rate, common labor rate?

A. An estimate?

Q. Yes.

A. About ten.

Q. And you were subject to assignment to any of those jobs?

A. Yes. (nods)

Trial Examiner Leff: Why don't you talk to those gentlemen in the back of the room so then we will all be able to hear. Throw your voice out.

Q. (By Mr. Elder): When you returned to the job, were there other common laborers in that department working, I am talking about the time you came back after the strike settlement?

A. The department I went into?

Q. Yes, in other words, these ten or estimated ten common laborers' jobs, some of those were filled prior to the time you went back, came back, were they not? [119]

A. Yes.

Q. And those men were working on the job at the time you came back?

A. Yes.

Q. Now, getting to this time when the curtailment occurred and you got your layoff notice from

(Testimony of Gail Cloninger.)

the foreman, were you told to report to the Employment Office? A. Yes.

Q. And did you report to the Employment Office? A. Yes.

Q. And did they offer you a job in another department or in any place? A. Yes.

Q. And why did you take that job?

A. I did.

Q. And when did you leave that job?

A. I stayed with it until I had an operation the 15th of February.

Trial Examiner Leff: I am confused at this point. When was this, at the end of the strike?

A. Yes.

Mr. Merrick: No, this was after he had been laid off and got back on again, right?

Mr. Elder: Well, that is what I am trying to bring out.

Q. (By Mr. Elder): At the time you were laid off were you [120] offered a job in another department? A. Yes.

Q. And you took that job? A. Yes.

Mr. George: The time reference when he was laid off, what is the date that you are talking about?

Q. (By Mr. Elder): What date were you laid off? A. Laid off December 30th.

Q. And what job were you holding, then?

A. Truck, helping the truck driver.

Q. And in what department?

A. Carpenters.

(Testimony of Gail Cloninger.)

Q. All right, at that time were you advised that you could have another job in another department?

A. The foreman told me to report to the employment office after New Years, the first working day after New Years, which I did.

Q. And you were assigned at that time?

A. Yes.

Q. And you took that job?

A. After I took these things up to the Union representative.

Q. But you actually had an assignment to a new job the first shift after you were laid off, is that right?

A. Yes, he said I could go to work whenever I had these meetings over with.

Trial Examiner Leff: Speak up, will you?

A. Well, whenever I had these meetings over I was going to go to work.

Trial Examiner Leff: Who said that, the foreman?

A. The employment manager.

Trial Examiner Leff: What meetings?

A. We had these grievances to take up like we were supposed to take up.

Q. (By Mr. Elder): But actually, Mr. Cloninger, you could have gone to work on the first shift, couldn't you, after you were laid off, the first work shift?

A. Yes.

Trial Examiner Leff: Well, why didn't you go to work?

A. We had to arrange for these meetings and get

(Testimony of Gail Cloninger.)

these meetings and meet with the management. I had to be there as the union representative, shop steward, in the department. That is in the agreement.

Trial Examiner Leff: Were you a shop steward?

A. Yes.

Q. (By Mr. Elder): You don't have to lay off to take in a Union meeting, do you?

A. I asked for permission to lay off and it was given to me.

Q. Well, actually, then, you were never out of a job, were you, Mr. Cloninger? A. No.

Trial Examiner Leff: Do you claim any back pay for this [122] witness?

Mr. Merrick: Well, I don't think so. What he has lost is negligible.

Trial Examiner Leff: Who took your place?

Q. (By Mr. Elder): The other man, isn't that right, Gail? A. Yes.

Trial Examiner Leff: This job that you were offered, did that pay the same rate? A. Yes.

Trial Examiner Leff: As a truck driver's helper? A. Yes.

Trial Examiner Leff: When you finally did go back to work after your layoff, what job did you return to?

A. I took a common labor job in the Cutup Department.

Trial Examiner Leff: And where are you working, now?

(Testimony of Gail Cloninger.)

A. Since my operations and everything we started up again in my old department, why, I was reinstated, reassigned to my old job. I am on it, now.

Q. (By Mr. Merrick): In the Carpenters' Department? A. Yes.

Q. (By Mr. Elder): Wasn't there a freeze-up, cold weather, wasn't that the cause of the curtailment in the Carpenters'?

A. I understand that was it.

Q. Since that time you have been reassigned to the Carpenter Department? [123]

A. Yes.

Q. At the time of this curtailment, who took your job? A. A man by the name of Dale Cox.

Q. And what rate did he have?

A. Common laborer.

Q. What rate did he have prior to the time that he took your job? What was he doing?

A. Common labor.

Q. What work was he doing?

A. He was helping carpenters and various work.

Q. Wasn't he a carpenter's helper?

A. It isn't necessarily classed as that.

Q. Now, tell me this, Mr. Cloninger, when did you first learn under this strike settlement agreement that you had all of your seniority rights except at the time of your curtailment?

A. When we went into the meeting with Mr. Troy, the Plant Manager, and Bill Andrews, Superintendent of Manufacture, they told us what it was.

(Testimony of Gail Cloninger.)

Q. You had never heard this, as you call it, this strike seniority ever mentioned until that meeting?

A. Not officially.

Q. Had you heard of it unofficially?

A. Of course, you can hear anything unofficially.

Q. Well, what had you heard around the plant unofficially?

A. I heard, there was rumors to that effect, that there was two [124] kinds of seniority.

Q. And when did you first hear that?

A. Oh, probably, a month prior to our curtailment in the department.

Mr. Elder: That is all.

Redirect Examination

By Mr. Merrick:

Q. I just have a couple of questions. Do you have a classification with the Company? Are you classified in a certain group as far as your job, for example, are you classified as a common laborer?

A. Yes.

Q. Now, before the strike, again, what was your classification? Was it common labor in the Carpenters' Crew?

A. Yes.

Q. And what classification did you return to after the strike?

A. Common labor.

Q. In what department?

A. In the same department.

Q. Now, this man, Dale Cox, that took your job, he actually replaced you in your duties, is that correct?

A. Yes.

(Testimony of Gail Cloninger.)

Q. After you got back on, what department were you assigned to? After your layoff and the processing of this grievance matter?

A. What department did I go to?

Q. Yes. [125]

A. The Cutup Department.

Q. Is that part of the Carpenters' Crew?

A. No.

Q. In other words, you were not returned to the Carpenters' Crew? A. No.

Mr. Merrick: That is all.

Q. (By Mr. George): Do you know what seniority the man had that replaced you that caused you to file a grievance?

A. I know it was less than what I had.

Trial Examiner Leff: Well, that would best be determined by Company records.

Recross-Examination

By Mr. Elder:

Q. Mr. Cloninger, in curtailment of a department like the Carpenter Crew was it customary at the plant for the common laborers to be transferred from one job to another when there was a curtailment due to cold weather or due to some other cause?

A. I had only been in it two years up till then and the year before they didn't have any curtailment, so I wasn't acquainted with the practices.

Q. Are common laborers transferred from one department to the other?

(Testimony of Gail Cloninger.)

A. I had seniority over a man that was maintained.

Q. But isn't it customary on the plant to transfer common [126] laborers from one job to another as the necessity arises?

A. In line with their seniority.

Q. What is the difference between one common labor job and another?

A. Well, if you like to work in a department you like to work in there and you earn seniority by the time you put in. [127]

* * *

Q. (By Mr. Elder): You were not terminated from your job as a result of any seniority, were you?

A. What?

Q. You were not laid off, you didn't lose any time?

A. No.

Q. You didn't lose your job with Potlatch Forests?

A. No. [128]

* * *

CLAUDE WALTERS

called and sworn as a witness on behalf of the National Labor Relations Board, testified as follows:

Direct Examination

By Mr. Merrick:

O. What is your name?

A. Claude Austin Walters.

Trial Examiner Leff: Where do you live, Mr. Walters?

(Testimony of Claude Walters.)

A. Twenty-first and Howard, Lewiston.

Q. (By Mr. Merrick): What is your present occupation, Mr. Walters? A. I am a laborer.

Q. In what department?

A. In the unstacker.

Q. How long have you been employed at Potlatch?

A. Well, it was five years the 6th of May.

Q. In other words, you started May 6, 1944?

A. Yes, sir.

Q. And have you worked on the unstacker all that time?

A. Well, practically all the time.

Q. Well, about how long have you been on the unstacker, do you recall? [129]

A. How long have I been on the unstacker?

Q. Yes.

A. Going on five years, the last five years.

Q. What is the unstacker, anyway?

A. Well, that is where they stack the dry lumber, grade the dry lumber and restack it or regrade it.

Q. Were you working as a common laborer on the unstacker when the strike started?

A. Yes.

Q. How long did you stay out on strike?

A. Full-time.

Q. The whole time? A. Yes.

Q. How did you go about getting back to work, do you recall?

A. Well, they just notified us that the strike was over and we went back on the 13th.

(Testimony of Claude Walters.)

Q. And what job were you given when you went back?

A. I went on the same job stacking six and eight or pulling six and eight, some fellows pulling and some stacking. I don't know what you would call it.

Q. In other words, you were a common laborer on the unstacker? A. Yes.

Q. You were doing the identical job you had before the strike? A. Yes.

Q. How long did you keep that job? [130]

A. Up until I was laid off.

Q. Do you recall when you were laid off?

A. I was laid off the 14th of January on the unstacker.

Q. What were the circumstances surrounding your layoff?

A. Well, the boss just come to me, Carl Rasmussen, come to me and said that he had orders to lay me off.

Q. Did you ask Mr. Rasmussen why you were being laid off? A. Yes.

Q. What did he say?

A. Well, he said if I just come one day during the strike I could have stayed on my job.

Q. What was that?

A. If I just come one day during the strike I could have stayed on my job.

Q. What else did he say?

A. Well, he told me to report to the Employment Office.

(Testimony of Claude Walters.)

Q. Did he give you any other reason why you were being laid off?

A. Well, nothing only I didn't have no right over the other men, that I couldn't bump no other men to hold the rest of the jobs.

Q. Did he give you any reason why you couldn't bump any other men?

A. No, nothing, only it was all on account of the strike, I didn't know what else. [131]

* * *

Trial Examiner Leff: Now, I call your attention to the fact that the witness gave his layoff day as January 14th and that varies from the date set out in the pleading.

Q. (By Mr. Merrick): Are you certain of that date that you were laid off?

A. That I was laid off on the unstacker?

Q. Yes. A. The 14th of January.

Q. What date was that that you were laid off on, do you recall, what day of the week?

A. Well, it was on a Friday.

Q. Yes, well, how long were you laid off, do you recall? A. Well, altogether?

Q. Yes.

A. Well, I was laid off, I believe, the 31st of January till the 10th of March.

(Last answer read.)

Mr. George: The 14th?

Q. (By Mr. Merrick): It's your recollection

(Testimony of Claude Walters.)

that you were laid off January 14th, is that correct?

A. Well, that is as near as I can remember it, yes. [132]

Q. What happened when you were laid off, did you go to the employment office?

A. I went to the employment office and I was transferred from the unstacker, then, to the replant.

Q. That is a different department?

A. That is a different department.

Q. And when did you get put on in the replant?

A. I dumped lumber in the replant.

Q. Well, how many days were you off in between there?

A. I wasn't off at all. That was the following Monday.

Q. You got right on the next Monday?

A. Yes.

Q. And, then, how long did you stay in the replant? A. I was there a week.

Q. Then, what happened?

A. I was laid off.

Q. Why?

A. Well, there was no more jobs that I could take.

Q. Did you have any seniority in the Replant Department?

A. No, I was just there a week.

Q. That was the first time that you had ever been there? A. Yes.

(Testimony of Claude Walters.)

Q. And how long were you laid off, approximately?

A. Well, I was laid off from the 12th around the 20th——

Q. Wait a minute, Claude. [133]

Trial Examiner Leff: Well, was it a week after January 14th? A. Yes.

Trial Examiner Leff: Well, that would make it the 21st?

Q. (By Mr. Merrick): January 21st, then, how long were you off, do you recall?

A. Yes, I was off till the 10th of March.

Q. And, then, what job were you taken back on?

A. I was put back on taking care of the hogs on the unstacker.

Q. Was that a common labor job?

A. That is a common labor job.

Mr. Merrick: That is all.

Direct Examination

By Mr. George:

Q. Do you know whether any of the men that were working after you were laid off in the unstacker department, and these men that were working in the unstacker department, do you know whether they had less seniority than you did?

A. Why, sure.

Q. How do you know?

A. Well, some of them went to work up there. The job that I have always had is taking care of

(Testimony of Claude Walters.)

the six and eights. There is always a man that pushes that six and eight over to you. This man that took my job pushed the six and eight to me before I went off.

Trial Examiner Leff: That was before you went into the [134] Replant Department? You mean when you went to work in the Replant Department, you fix that as of January 21st, now? At that time do you happen to know whether there were any other common laborers in the Replant Department or who had been working anywhere for Potlatch less than you, for a smaller period than you had been working?

A. Not in that department at all.

Trial Examiner Leff: When you went into the Replant Department between January 14th and January 21st, how long had you been working for Potlatch, how many years?

A. How many years?

Trial Examiner Leff: Yes.

A. Well, it would have been five years if it had been up till the 5th of May, the next.

Trial Examiner Leff: Now, were there any other common laborers in the Replant Department during the week that worked there between January 14th and January 21? Were you the only common laborer or were there others?

A. Oh, no, I wasn't. There was others, there was cleanup men and all that was common laborers.

Trial Examiner Leff: Now, referring to the

(Testimony of Claude Walters.)

other common laborers, the cleanup men and others, had they all been there more than five years in the plant working for Potlatch?

A. Well, in the Replant?

Trial Examiner Leff: No, anywhere in the employ of [135] Potlatch?

A. Why, sure, I suppose there were.

Trial Examiner Leff: They had all been there more than five years?

A. Why, no, not all of them.

Trial Examiner Leff: Had there been any there less than five years? A. Why, yes.

Trial Examiner Leff: Can you name them?

A. Why, no, not to call them by name, I couldn't. I don't know their names.

* * *

Q. (By Mr. George): I want to know whether or not the man who took your place on the un-stacker department, whether or not he lost any time?

A. Whether the man that took my place did?

Q. Or did he work on through?

A. He went on through. [136]

Q. In other words, there was work to do at your job all the time that you were transferred to the other department and at all the time that you were laid off entirely? A. Yes.

Q. Now, when you were transferred to this new department did you have to start in with new seniority when you got in this new department?

(Testimony of Claude Walters.)

A. Well, I suppose I would but, then, now hold on, on this new department I was just put in there to fill in for a man on his sick spell for a week. You see, I wouldn't be there long enough to get any rights there.

Q. Did you have any rights in any other place in the plant because you had worked five years?

A. Why, yes, all the other jobs, cleanup jobs, the hog job. I think I was rated as five jobs.

Q. Were those all in the unstacker department?

A. Yes, all in the unstacker. [137]

* * *

Q. (By Mr. George): You say, you were out the full time of the strike? A. Yes.

Q. On the picket line?

A. Part of the time.

Mr. George: I see, that is all.

Cross-Examination

By Mr. Elder:

Q. Mr. Walters, as a matter of fact after you left the unstacker and went to the Replant you were offered other jobs and wouldn't take them, weren't you? A. I couldn't take them, Mister.

Q. Why?

A. Because I couldn't get there to the job that they give me.

Q. Weren't you offered about the 20th of January, 1949, a watch job? A. I was.

Q. And why wouldn't you take that?

(Testimony of Claude Walters.)

A. It was because my feet and ankles won't stand walking.

Q. Did you walk on the other job?

A. Not but very little.

Q. Were you on your feet all the time?

A. I was on my feet, yes.

Q. Do you feel that a watch job was harder on your feet than [139] working at the job you were working on?

A. Yes, I did.

Trial Examiner Leff: What is a watch job?

A. That is punching clock and watching over different parts of the plant.

Trial Examiner Leff: It's a watchman's job?

Q. (By Mr. Elder): You have to punch a clock on that?

A. Yes.

Q. And when you refused that job, were you not offered a job picking box in the Replant?

A. No.

Q. Were you ever offered a job that was a night job picking box on the Replant?

A. Yes, a straight job, a straight night job.

Q. And that was about the time that you turned down the watch job?

A. That was after I turned down the watch job.

Q. And why wouldn't you take that job?

A. Because I couldn't, I couldn't see to drive of a night.

Q. Do you drive your own car?

A. No.

Q. Do you travel by bus?

A. No, I travel with the son-in-law.

(Testimony of Claude Walters.)

Trial Examiner Leff: With whom?

A. With my son-in-law. [140]

Q. (By Mr. Elder): Could you ride the bus if you had taken that job?

A. No, there would have been no bus at that time of night to take me.

Trial Examiner Leff: What are the night hours, what are the hours for the night shift?

A. It was three o'clock to eight.

Mr. Merrick: Three in the morning till eight in the morning. A. Yes.

Q. (By Mr. Elder): This picking box at the Replant at night was the regular night shift, wasn't it? A. Yes, I suppose.

Q. And doesn't the bus go right by your home?

A. No.

Q. Doesn't that night shift start at five in the evening? A. Well, I think it does.

Q. It lets out about two, doesn't it?

A. I think so.

Q. Do you remember of telling the Employment Office when you refused that job that you would be back when the weather warmed up?

A. Well, no, I don't know as I did.

Q. As a matter of fact, isn't it true, Mr. Walters—

Trial Examiner Leff: Is that all, did you finish your [141] answer?

(Last answer read.)

Q. (By Mr. Elder): As a matter of fact, didn't

(Testimony of Claude Walters.)

you want to do some building around home that you told the Employment Office that you would just as soon have some time off as long as it was so cold, anyway? A. No, I did not.

Q. Do you remember on March 2nd, 1949, which was after you had turned down this job at night you were offered a cleanup job in the stacker from three a.m. to eleven a.m., a steady job? A. No.

Q. You don't remember that cleanup job that was offered you which was the late shift starting at three in the morning and working till eleven?

A. Yes, but I remember that I just answered that a little bit ago, I couldn't say, I couldn't see to drive at that time.

Q. But the other job was the job that was offered to you in the Replant that was from five to two o'clock? A. Yes.

Q. Then, later you were offered this job, cleanup in the stacker, from three to eleven? A. Yes.

Trial Examiner Leff: How old are you?

A. I am fifty-nine years old.

Trial Examiner Leff: Do you wear glasses?

A. Yes, sir.

Q. (By Mr. Elder): And you were finally offered a job on the dock on March 10th, 1949, and you took that job? A. Yes, sir.

Q. Prior to that time did you apply for a job tending lawns at the plant?

A. I tried to get that job, yes.

Q. And you felt that you could handle that job even with your feet?

(Testimony of Claude Walters.)

A. I thought I could, yes.

Q. You felt that that was less walking than the watch job? A. Yes, I did.

Q. And you are now back in the unstacker?

A. Yes, sir.

Q. When did you go back there?

A. I went back there——

Q. About the 21st of March, 1949?

A. Yes, around about that.

Q. Now, do you work nights in the unstacker at the present time? A. Yes.

Q. How do you get back and forth?

A. I go with the son-in-law.

Q. And what do you do, you work part of the time in the daytimes, how does your shift work out?

A. I work one month daytime and one month nights.

Q. Does your son-in-law work the same hours?

A. He does.

Q. He works in the unstacker, too?

A. No.

Q. But you happen to work the same shift?

A. He works the same shift.

Q. The reason you didn't take these other jobs is because you wouldn't be able to ride with your son-in-law? A. That is right.

Q. Oh, why didn't you file a grievance about this if you felt that you were discriminated against, Mr. Walters?

A. Well, I don't know, I can't answer that.

(Testimony of Claude Walters.)

Q. As a matter of fact, you didn't, it didn't make any difference to you because of this layoff that you had in here?

A. It made no difference to me?

Q. Yes, actually, you were willing to take the time off, weren't you, Mr. Walters?

A. Why, no, of course, I wasn't.

Q. You knew you had a right to file a grievance?

A. I suppose I did, yes.

Q. When you went back after the strike, who was on your job?

A. Who was on my old job?

Q. Your old job.

A. Well, a man, I can't call his name. [144]

Q. There was another man on that job, though?

A. Yes, sir.

Q. And did he stay on that when you were transferred, when you left the department?

A. No, not when I left, he wasn't on there.

Q. He had left the job?

A. He come on after I left this man that has got it, now.

Q. The man that had it, Mr. Walters?

A. The man that had it when I left went on the job that I left. They transferred him to Presto-log house and took the man on the Presto-log house and put on my job. This fellow was trying to do my job.

Trial Examiner Leff: Well, let me get this thing

(Testimony of Claude Walters.)

straight, just before the strike what job were you holding?

A. I was stacking six and eight.

Trial Examiner Leff: Now, when you came back to work after the strike, what job did you get?

A. I stacked six and eight.

Trial Examiner Leff: That is exactly the same job as you held before the strike?

Mr. Merrick: He is talking about this last lay-off, that is what he had reference to.

Q. (By Mr. Elder): I think we had better clarify that for the record, Mr. Examiner.

Mr. Merrick: I think the record is clear. On direct [145] he stated specifically that he had the same job before and after the strike.

Q. (By Mr. Elder): Were there other common laborers in the department? A. Yes.

Q. How many about?

Mr. George: I think the Company's records would be the best on that. You are asking an impossible question.

Trial Examiner Leff: Well, he should know, he was there. How many, that is, in the unstacking department?

A. Yes.

Trial Examiner Leff: How many common laborers were there?

A. Well, there would be about four that I know of.

Q. (By Mr. Elder): Were there any common laborers working there when you came back from the strike after you had been out on strike?

(Testimony of Claude Walters.)

A. Yes.

Q. How many were there, then?

A. Why, all the jobs was full.

Q. All the jobs were full when you came back?

A. Yes.

Q. But you went to work stacking, didn't you?

A. Yes, sir.

Q. But all the other common laborer jobs were filled except yours, except the one you took? [146]

A. Well, I suppose mine had been filled, I don't know.

Mr. Elder: That is all.

Redirect Examination

By Mr. Merrick:

Q. Claude, how old are you?

A. I am fifty-nine.

Q. What is your physical condition?

A. Well, my——

Q. Have you been in good health?

A. Outside of my eyes.

Q. What trouble do you have with your eyes?

A. Well, I don't know.

Q. Well, anyway, prior to your layoff on January 14th, what shifts were you working on? Did you work a day shift one month and, then, a night shift the next month?

A. I think I was working on the day shift when I was laid off.

(Testimony of Claude Walters.)

Q. Yes, but you would alternate, month to month? A. Yes.

Q. And you would ride to work with your son-in-law? A. Yes.

Q. Now, this job that you were offered picking boxes in the Replant, what shift was that on?

A. That was straight night.

Q. Is that in the same department as the——

A. (Interposing): Unstacker, no.

Q. Now, regarding this grievance that you have, you say you [147] did not file a grievance with the Company, is that correct? A. No.

Q. Did you take it up to the Union, though?

A. Yes, why, yes, I asked the Union.

Q. And what did they tell you at the Union?

A. I can't hardly recall what they did tell me.

Q. Well, who do you recall of bringing it up to with the Union? Who was it presented to?

A. Well, I think I talked to Frank Gordon about it.

Q. And you left it in his hands, in other words?

A. Yes, sir.

Q. How about this watchman's job, is that the same shift that you had before? A. No.

Q. What was that, what shift was that?

A. That would be on nights, steady.

Q. Do you know much about this watchman's job? A. No, I never was on it.

Q. To your knowledge is that a job that requires steady walking? A. That is it.

(Testimony of Claude Walters.)

Q. You have to cover a certain area of the plant punching clocks? A. Every hour.

Q. On your old job did you stay in the same place all the time?

A. Well, sometimes I do and sometimes I don't. On my old job [148] I would work backward on the chain, up and down the chain. Well, I wasn't all the time moving up and down the chain.

Q. How long an area is that that you had to cover, though?

A. Oh, I suppose around maybe thirty feet.

Q. And how long had you held that job, how many years? A. About three years.

Q. Yes.

Mr. Merrick: That is about all I have.

Trial Examiner Leff: How about that other job that you were offered, what was it, mowing lawns or something?

A. Yes, I put in application to work on the lawns, yes.

Trial Examiner Leff: Well, didn't that require steady work on your feet, too?

A. Well, I suppose it did but it wouldn't be walking lawns like it would on walks around that mill, would it?

Trial Examiner Leff: I don't know. You prefer to walk on grass?

A. Well, I would if your feet is sore.

Q. (By Mr. Merrick): There would be a lot of work trimming edges and that sort of stuff, wouldn't

(Testimony of Claude Walters.)

it, you could kneel down for that or lay down?

A. Yes.

Recross-Examination

By Mr. Elder:

Q. Would you describe this job that you held for three years which is stacking or unstacking, whichever one [149] you want to call it?

A. Describe it? Tell you what it is?

Q. Yes.

A. Yes, sir, in lumber in the unstacker they call it remanufacture, that is, a board if it is defective on one end, see, they will cut it to a six and eight foot board. Well, that comes around the chain and it is up to me to take care of that, if there was one or a dozen or a hundred.

Q. And these boards are coming down on to a chain, a movable chain, aren't they?

A. Yes, sir.

Q. Doesn't your job make you constantly walk up and down there to keep up with those boards coming through?

A. No, no, why you don't have to keep up with them.

Q. Why is that?

A. There is a place there you can pull them boards off and lay them and when you get enough of them you can make a trip down and pile them.

Q. You are walking between the end and the beginning of this chain all the time, aren't you, Mr. Walters?

(Testimony of Claude Walters.)

A. Well, no, not all the time you are not walking between it, no, you are standing in one place watching them boards. If you know your mark in your boards, why, you know where it is at, where to go.

Q. These boards are all piled in one spot, are they? [150]

* * *

Mr. Merrick: At this time, Mr. Examiner, I would like to have this letter marked for identification as General Counsel's Exhibit No. 12. It's a copy of the letter from Mr. Beardmore, attorney for Potlatch Forests, addressed to Mr. Howard Hilbun, who is a Field Examiner with the National Labor Relations Board in Seattle. This exhibit sets out information regarding Mr. Claude Walters and Mr. Cloninger and what departments they have worked in, their seniority, and it sets out, also, who replaced them when they were laid off, and what their seniority was. I wonder if I might stipulate that that be received in evidence. Also, I would like to point out that we are offering it to show not only the seniority of these men and the seniority of the men who replaced them, we do not acquiesce in the Company's explanation of who replaced them.

Mr. Elder: If he is going to offer it, I think he should offer everything in the letter.

Mr. Merrick: I will offer it for what it may be worth. I think it will show just what is contained in there.

(Testimony of Claude Walters.)

Mr. Elder: We have no objection to the admission of the exhibit.

Trial Examiner Leff: General Counsel's Exhibit No. 12 is admitted in evidence.

Mr. Merrick: And you stipulate that the employment records herein contained are true and correct, according to the Company's payroll records. I am particularly interested in the record of Claude A. Walters, Mr. Paul Slater, who replaced Gail Cloninger, and Dale Cox, who replaced Cloninger.

Mr. Elder: We will stipulate that as far as Mr. Beardmore knew at the time he wrote the letter that that was what the payroll records showed. There may be an error in them. We will produce the payroll records.

Trial Examiner Leff: I will assume that that letter accurately reflects the payroll records until evidence to the contrary is offered by the Respondent.

(Thereupon the document above referred to was admitted in evidence as General Counsel's Exhibit No. 12.)

Trial Examiner Leff: Do you have anything further?

Mr. Merrick: I would like to recall Mr. Gordon to the stand for a few minutes on this question of seniority, if I might.

FRANK GORDON

recalled as a witness on behalf of the National Labor Relations [153] Board, testified as follows:

Direct Examination

By Mr. Merrick:

Q. Mr. Gordon, I would like to call your attention to Article XIII of the 1946 master agreement, which is General Counsel's Exhibit No. 2. Relative to the question of seniority, are you generally familiar with the grievances that you have processed regarding seniority at the plant.

A. Well, I couldn't name them offhand but I am familiar with the majority, the manner in which they are processed.

Q. Now, I would like to hand you a copy of this particular agreement (hands paper to witness) and paying particular attention to Section 1-B, would you attempt to give us the picture of how that provision has operated in the past especially prior to the strike before the question of super-seniority arose?

A. Well, now, it is not in the matter of a definite curtailment as I know of, we have had very few of these cases but the manner in which this was handled was in case of curtailment a man first exercised his seniority on his job, and if there were older employees there on the same job, that is, say, if there were three or four jobs alike and there were older employees in that department having

(Testimony of Frank Gordon.)

seniority over him on that job, he stepped to some other job in that department and exercised his seniority within the department. If he did not have any seniority in the department and was finally pushed out of [154] there, then, he exercised his seniority in the plant and went back the way he came up, is the way the wording is in the agreement. Say that he had been in other departments or other jobs and was pushed out of his department, he would go on to the next highest rated job.

Trial Examiner Leff: Now, let me ask you: supposing a man had been in a department as a common laborer for four years and there was a curtailment and he was junior in point of service, he had the least seniority, in other words, and so he had to get out of his department, now, could he go into another department where there were, also, common laborers and bump some common laborer in another department who had less seniority than he had in the plant?

A. Yes, but he would be forced to exercise it in his department if he could.

Trial Examiner Leff: I don't understand what you mean by that.

A. Well, say that I was working in a department there and I had five years seniority and that five years seniority would hold me there but say that there was another department over here where the fellow had only had six months and I wanted that job, I couldn't hop over there and take that

(Testimony of Frank Gordon.)

job when my job was open over there when I couldn't be displaced there.

Mr. Merrick: Now, what department is the Shook Department? We might stipulate on this, that is not in the same [155] department as the unstacker?

Mr. Elder: It isn't.

Mr. Merrick: It is not in the same department as the unstacker.

Q. (By Mr. Merrick): Now, Mr. Gordon, prior to the time the super-seniority set-up was in force would there be any possible way that a man who had started to work in the unstacker on April 9th, 1947, would there be any possible way that he could bump a man on the unstacker who had started on May 17th, 1944?

A. Off of his own job, you mean?

Q. Yes. A. No.

Q. There was no possible way that he could replace him? A. No.

Q. Prior to the strike?

A. That is right.

Q. Now, what had been the policy prior to the strike regarding a man who, say, was being paid five cents above common labor if he were upon a common labor job, would he be considered classified as a common laborer?

A. I didn't quite get just the sequence there?

Q. Now, I am referring specifically to the case of Mr. Dale Cox, who replaced Gail Cloninger.

(Testimony of Frank Gordon.)

Cloninger started work September 3rd, 1946, in the Carpenters' Crew as a common laborer. He was replaced by Dale Cox in the Carpenters' Crew at common [156] labor, as a common laborer. However, prior to the time that Dale Cox was transferred to that job he had been paid five cents above common labor. Would that be in accordance with your interpretation of the agreement?

A. That he could replace because he was on a higher-paid job?

Q. Yes.

A. And didn't have the seniority?

Q. Yes. A. No.

Q. In other words, the seniority goes by job classification more than by pay scale?

A. That is right.

Q. If you are going to work as a common laborer you have to have seniority for it?

A. If you are going to work you have to have seniority, period; according to the way it has always been handled.

Mr. Merrick: I think that is about all.

Direct Examination

By Mr. George:

Q. This seniority on a plant basis isn't clear to me. Am I to understand that if a man works in more than one department on his way up to his last job and, then, he starts to go back down he has to go back down the same way he came up?

(Testimony of Frank Gordon.)

A. That is true.

Q. In other words, the mere fact that he has five or ten or [157] whatever number of years seniority doesn't mean anything as to jobs and departments that he has not worked in ever?

A. It's pretty, there is nothing spelled out definitely in that respect in this agreement and it has been pretty definitely agreed or, at least, it hasn't been agreed, it has simply been worked that way that when a man finally gets out of his department and has never been employed in any other part of the mill in any other department he is pretty near faced with a common labor job in some other part of the mill on his rate and has to work back up to that.

Trial Examiner Leff: Supposing there are no common laborer's jobs available in the mill at that time?

A. Well, he would still have to take the lowest job that he could bump, according to the way it has been handled in the past. Now, I don't say that that is exactly the Union's interpretation, there has been no agreement arrived at it, but there has been cases settled that way, I understand, here in the mill and there has been no, it isn't spelled out here and there has been no definite settlement in that respect arrived at as to what job a man can lie in if he comes back down. On this type of an agreement the Union's contention is that a man who is a skilled man can work back into another

(Testimony of Frank Gordon.)

job providing he has been hired at the top, that he can work back into another job that he is able to do, the next highest but, however, that has never been spelled out in this agreement nor to my knowledge [158] has there ever been anything that would definitely set the pattern for that particular thing.

Q. (By Mr. George): Let me see if we get it clear, now: you have listed in your contract eight different departments? A. Yes.

Q. Assuming that a man is a common labor man in department number one does he have a call in common labor jobs in any one of those eight departments if his department gets shut down to a place where they don't need common labor?

A. That is right.

Q. He does have a call?

A. You mean, where they don't have common labor at all?

Q. Supposing we take the Manufacturing Department as the starting department, this man is a common laborer in the Manufacturing department and the Manufacturing department closed down to the point where they don't use common labor but there is common labor in the other seven departments, can he go in there and bump men with less seniority than he has?

A. Sure he can.

Trial Examiner Leff: Even though he has never worked there in the other departments?

A. Well, a common labor job is supposed to

(Testimony of Frank Gordon.)

be one that doesn't need any skill and we maintain, yes, he can.

Trial Examiner Leff: He can bump anyone that has seen less service with the Company? [159]

A. There might have been jobs out there that a man will admit he can't do. We maintain a common labor job, a man can bump men in the other department.

* * *

Cross-Examination

By Mr. Elder:

Q. Now, isn't it true in the seniority policy as you interpret it that in a short layoff for curtailment that the Company has no obligation to find——

A. (Interposing): What do you call a short layoff?

Q. Well, say, three days or four days or a week or two weeks, you can qualify your answer? [160]

A. We maintain that in anything over a shift that the Company is supposed to exercise seniority.

Q. Has that been the policy?

A. Well, if you will read the interpretation on the agreement that the Company has maintained that the remainder of a shift when you transfer to another job is all that you can hold as temporary, that that means "temporary," and that we maintain the same thing, if it is temporary, then, a job change of classification is, also, temporary.

Q. How has it actually been operated, though?

A. I think it has been operated pretty much that

(Testimony of Frank Gordon.)

way. We have had numerous cases where there was going to be two or three days that the men get their places if they want them.

Q. Isn't it true that in many instances men are laid off for two or three days and it has been assumed that the work would go on as soon as the weather got better or for some other reason?

A. Pretty much under agreement with the men themselves if they were willing to do so.

Q. But they have done that?

A. It has been done because it was agreeable with the men themselves that they wanted to take some time off.

Q. Where there is a common laborer working in a department and the Company doesn't need him there any more, the need for the job has disappeared for some reason or another, they have a right to transfer him to another department?

A. With his consent.

Q. What do you mean?

A. Under the agreement it says that any man whose job has been temporarily curtailed or, I forget, I will have to read, but there is a clause here that definitely covers that situation and it applies just the same to a common labor man who has been assigned to a department as it does to a skilled labor man.

Trial Examiner Leff: Suppose there were three common laborers in a department and because of a reduction in work the Company finds it only needs

(Testimony of Frank Gordon.)

two in that department, now, can it transfer any-one of the three to another department or must they transfer to the other department in order of seniority?

A. It has always been that seniority has been considered at all times, as far as I know.

Trial Examiner Leff: Is that covered in the contract?

A. Well, we don't consider common labor any different than a job, it says "Your job"; it is covered here very definitely.

Trial Examiner Leff: What particular clause would cover it?

A. I will have to look. I will have to get my glasses out, now, you have went and got me into deep water. I could quote it pretty near but not exact (witness refers to book).

Trial Examiner Leff: 1-b? 1-b? [162]

A. Well, yes, I think that covers it very sufficiently. "The Company and the Union agree that seniority on a job classification within a department shall date from the first date an employee is permanently rated in such job classification; that seniority within a department itself shall date from the first date an employee is rated within the department," and I think that part of it right there would cover common labor as well as anyone else. If he is rated in that department, why, then, that gets him a right to his job. There has been transfers of that nature made and we have always used that basis, of course.

(Testimony of Frank Gordon.)

Q. (By Mr. Merrick): Mr. Gordon, how long does it take a man to become rated in a department?

A. Well, it was the understanding, although there has been nothing that I find written out on the subject, it has been pretty much an understanding of thirty days that they are supposed to try to rate a man in his department.

Q. Well, then, is that what Claude Walters had reference to when he would work one week in the Replant he said he couldn't be rated.

A. No, that is not definitely, that wouldn't be quite the same with a man that is an old employee of the Company. I was thinking of a new employee who under our agreement, it's more or less of an understanding. It seems to me that that was in effect before I ever came here that no one builds any seniority for [163] thirty days with the Company. If they were discharged or quit or anything within thirty days they do not hold any seniority at the plant. Now, unless they are unjustly discharged or something of that kind, but on a old employee going into another department that is a different matter and he could be rated on another job in a place like that in two or three days providing they saw fit to do it. If he was capable of handling the job; however, he was only working in another man's place and, of course, was getting no seniority on that job. [164]

CHARLES J. CUMMERFORD

called and sworn as a witness on behalf of the Respondent, testified as follows:

Trial Examiner Leff: What is your name?

A. Charles J. Cummerford.

Trial Examiner Leff: Where do you live?

A. 1003 Prospect, Lewiston.

Direct Examination

By Mr. Elder:

Q. What position do you hold, Mr. Cummerford?

A. Shipping superintendent.

Q. Of Potlatch Forests, Inc.? A. Yes.

Q. And what unit?

A. Clearwater unit.

Q. And how long have you held that position?

A. Since July 1, this year.

Q. And what position did you hold prior to that?

A. Assistant shipping superintendent and Personnel Director.

Q. How long did you hold that position?

A. Approximately seven years.

Q. And during that time that you were personnel director, [220] did you have in your possession the employment records of all the employees of the Clearwater Unit? A. That is right.

Q. And you handled the personnel and labor relations for the Clearwater Unit?

A. Not labor relations.

(Testimony of Charles J. Cummerford.)

Q. Did you handle the personnel work for the Clearwater Unit? A. That is right.

Q. Are you acquainted with the seniority policy of the Potlatch Forests, Inc.?

A. I believe I am, yes.

(Thereupon Respondent's Exhibit No. 2 was marked for identification.)

Q. (By Mr. Elder): Was the interpretation and the procedure to be followed under the seniority written up, a preliminary draft?

A. It was.

Q. I hand you Respondent's Exhibit No. 2, and ask you to identify that (hands paper to witness).

A. That is the copy.

Q. Of what?

A. Of the interpretation of seniority.

Trial Examiner Leff: The Company's interpretation?

A. That is right. [221]

Trial Examiner Leff: When was that first written up, to your knowledge?

A. To the best of my knowledge it was in October, 1948, that is, approximately, I believe, October, '48, and if I may be allowed to add, that interpretation was first drawn up by a committee in my office, and it was presented to the management to be worked over and revised, and, then, returned to us.

Mr. Elder: We offer Exhibit No. 2.

Mr. Merrick: I will object to it on the basis

(Testimony of Charles J. Cummerford.)

that it is self-serving, and it is, at best, a unilateral interpretation of what the seniority policy of the Company is.

Trial Examiner Leff: May I see it, please?

Mr. Elder: Here is a copy of it (hands paper to Examiner). Before ruling on it, I would like to ask a couple of more questions.

Trial Examiner Leff: Yes.

Mr. Merrick: Also, Mr. Examiner, there is the further objection I would like to point out; on the last page here is attached the return to work policy, which is the alleged oral agreement.

Trial Examiner Leff: Well, as I understand it, this is being offered merely as the Company seniority policy. You are not contending that this was agreed to by the Union?

Mr. Elder: The reason we are offering it is, Mr. Examiner, is because we could bring this out by oral testimony [222] but that the counsel for the Union and the counsel for the Government kept asking us for something in writing, yesterday as to our policy. This is our policy.

Q. I would like to ask the witness before ruling, for what purpose did you make up this Respondent's Exhibit No. 2?

A. To interpret the Company's policy of seniority.

Q. For what purpose?

A. For lay-offs and promotions, and everything regarding anything that seniority is used for.

(Testimony of Charles J. Cummerford.)

Trial Examiner Leff: Who actually prepared this?

A. Who actually prepared that?

Trial Examiner Leff: Yes, the writing, who drafted it?

A. The first draft was made by a committee from my office.

Trial Examiner Leff: Were you on the committee?

A. I was. We turned it over to the management, and the management held meetings on it. I don't know just what type of meetings. It was revised, some revisions made in it, and returned to us.

Trial Examiner Leff: And when you refer to "management" whom do you mean, specifically?

A. The plant managers of the various units.

Trial Examiner Leff: What material sources did you use in drafting this?

A. Well, all the information that we have in my office regarding just such things as seniority and the policy as set [223] up in the agreement between the Company and the Union.

Trial Examiner Leff: Well, you didn't rely entirely on the agreement, did you?

A. To draw that up?

Trial Examiner Leff: Yes.

A. Why, yes, except the strike settlement.

Trial Examiner Leff: Well, you didn't find that a copy had been signed by the Union?

A. No, that is right.

(Testimony of Charles J. Cummerford.)

Trial Examiner Leff: Do you press your objection?

Mr. Merrick: Well, not if that is the only limited purpose that it is offered for.

Trial Examiner Leff: Do you have any objection, Mr. George?

Mr. George: Yes, I would like to have an objection that it is a self-serving document, and, too, that it is an attempt, the document tends to violate the parol evidence rule as to matters that are in evidence.

Trial Examiner Leff: Well, since this is offered merely as reflecting the Company's interpretation of its seniority policy, I will accept it for that purpose. Respondent's Exhibit No. 2 is admitted.

(Thereupon, the document above referred to was admitted in evidence as Respondent's Exhibit No. 2.) [224]

RESPONDENT'S EXHIBIT No. 2

Potlatch Forests, Inc.

Seniority—Interpretations and Operation

Article XIII, Section 1 and 2

The seniority clause of the master working agreement states that all seniority shall be considered first, by job classification; second, by department; and third, by plant. It shall be used as a basis for preference in shift as well as promotion and

(Testimony of Charles J. Cummerford.)

Respondent's Exhibit No. 2—(Continued)
in event of curtailment or during slack work periods. In both promotions and retention of jobs competency can be considered as well as length of service.

The definitions and factors making up our interpretation of our seniority system are as follows:

I. Definitions:

A. Plant seniority shall date from the date of an employee's last employment by the company. Loss of time for any of the following reasons is considered time worked for computing plant seniority:

1. Military Service (Selective Service Act);
2. Granted leaves of absence for personal reasons; for work with company contractors at company request; and for union officials.
3. Illness.
4. Accidents.

B. Department seniority shall be the actual number of days in the department plus temporary transfers at company request.

C. Job seniority will start when an employee is permanently rated in a permanent job opening or in a job line defined in the progression schedule effective in the department.

(Testimony of Charles J. Cummerford.)

Respondent's Exhibit No. 2—(Continued)

D. Permanently rated means to hold a job for sixty days or being rated as qualified for that job by the foreman in less than 60 days.

II. Transfers:

A. Permanent-Employee Request for job that is open

1. Within Department

- a. Plant seniority—no effect unless department seniority is equal.
- b. Department seniority—preference for job line. Preference for new jobs created in department.
- c. Job seniority—no effect.

2. Within Plant

- a. Plant seniority preference for job openings in new department, competency considered preference for job openings in all departments if no employee available in the department.
- b. Department seniority—no effect.
- c. Job seniority—no effect.

B. Temporary—Company Request.

1. Plant seniority is accumulative.
2. Department seniority is accumulative in regular department of temporary assignment.

(Testimony of Charles J. Cummerford.)

Respondent's Exhibit No. 2—(Continued)

3. Job seniority is accumulative in regular job and gains seniority in job of temporary assignment.

III. Promotion:

A. Within department

1. Plant seniority has no effect unless department seniority is equal.
2. Department seniority operates for preference for a job opening in a line of progression.
3. Job seniority operates for preference for upgrading in the same line of progression.

B. Within plant

1. Plant seniority operates for preference for job openings in new departments considered. Preference for job openings in all departments if no employee available in the department, competency considered.
2. Department seniority—no effect.
3. Job seniority—no effect.

IV. Curtailment:

A. Permanent (Elimination of job or prospective lack of work for 30 calendar days or more).

1. Plant seniority operates for preference for any base job in unit.

(Testimony of Charles J. Cummerford.)

Respondent's Exhibit No. 2—(Continued)

2. Department seniority operates to retain job in department.
3. Job seniority operates to retain a job in a job rate classification if department seniority is sufficient to hold job in department.
4. Strike seniority
 - a. Men who returned to work October 13 to 22, inclusive, 1947, will in case of curtailment be laid off ahead of men who returned to work or were hired on or before October 12, 1947 (settlement date). The order of lay-off in each group will be based on each person's previous seniority rights. (See attached "Return to Work Policy.")

B. Temporary (Prospective lack of work for less than 30 calendar days).

Plant, department and job seniority may be disregarded in case of a shortage of work or men.

V. Personal sickness and accidents:

Plant, department, and job seniority accumulates during such absence.

VI. Leave of Absence:

Plant, department and job seniority accumulates during absence.

(Testimony of Charles J. Cummerford.)

Respondent's Exhibit No. 2—(Continued)

VII. Shift Preference:

A. Plant seniority has no effect unless department seniority is equal.

B. Department seniority operates for preference in departments that do not rotate shifts.

C. Job seniority operates for preference in departments or on jobs which do not rotate.

VIII. Foremen's Seniority:

Plant, department and job seniority accumulates for time spent as a foreman.

IX. Student Lumber Salesmen:

There is no seniority for these employees, unless dropped as student lumber salesmen. In case they are dropped, the plant, department and job seniority is picked up and credited.

X. Overtime:

A. Plant seniority—no effect.

B. Department and job seniority will operate to rotate overtime in the department or job with the oldest man first.

XI. Women Employees:

A. Plant seniority will operate for retaining a job on designated jobs within designated departments in case of curtailment.

(Testimony of Charles J. Cummerford.)

Respondent's Exhibit No. 2—(Continued)

B. Department seniority will operate for promotion to or retaining of designated jobs in department.

C. Job seniority will operate for transfer or promotion to designated jobs within department.

XII. Box Factory:

Plant seniority will not accumulate unless employee is or had been permanently rated on a job equal or higher than base rate of plant.

Potlatch Forests, Inc.—Return-to-Work Policy

Employees who returned to work October 13th to 22nd, inclusive, 1947, will, in case of curtailment, be laid off ahead of employees who returned to work or were hired on or before October 12, 1947 (settlement date). The order of layoff in each group will be based on each person's previous seniority rights.

Employees who returned to work on or before October 12, 1947, re-established their previous seniority for all purposes. Employees who returned to work October 13 to October 22, inclusive, 1947, re-established their previous seniority for purposes of curtailment as among this group (returning October 13 to 22, incl.), and for training and promotion among all groups.

(Testimony of Charles J. Cummerford.)

Respondent's Exhibit No. 2—(Continued)

Employees who returned to work on or before October 22, 1947, but whose jobs had been filled while they were on strike, will be given an opportunity to return to their old jobs at the first opening occurring. If this opportunity is passed up then the employee's rate will revert to the rate of the job he holds and he will have no further right to return to his old job.

When an employee, who is on a job convenience rate, is offered a job equal to or paying more than his old job's rate and this opportunity is passed up the employee's rate will revert to the job he holds but shall be given an opportunity to return to his old job when it is open. If he passes up the opportunity he will have no further right to return to his old job.

When an employee, who is on a job convenience rate, is promoted to a higher paying job and then there is a curtailment he returns to the job his seniority entitles him to and at that job's rate—not at the job convenience rate from which he was promoted.

Employees who returned to work on or before October 22, 1947, will retain all previous seniority rights for purposes of training and promotion.

Former employees who returned to work after October 22, 1947, will be classed as new employees.

Received in Evidence July 12, 1949.

(Testimony of Charles J. Cummerford.)

Trial Examiner Leff: Is that the first time you prepared anything in writing as to the seniority policy?

A. I prepared anything? That is the first time I prepared anything.

Trial Examiner Leff: Was there any writing in existence prior to that time?

A. Regarding what?

Trial Examiner Leff: The seniority policy.

A. The seniority policy prior to the strike?

Trial Examiner Leff: No, regarding the Company's interpretation of the seniority policy?

A. I believe so, I don't believe there has been anything written up as far as I know.

Q. (By Mr. Elder): After the strike settlement, Mr. Cummerford? After the strike settlement which was dated, the return to work was October 14, 1947, was the policy as to seniority written up?

A. A policy of the strike settlement?

Q. Yes. A. Yes, it was.

Q. I call your attention to the attached exhibit, A, on Respondent's Exhibit 2 (hands paper to witness) and ask you if that is the policy that was written up, and when that was written up?

Trial Examiner Leff: If he knows. [225]

Q. (By Mr. Elder): If you know, approximately.

A. Yes, that is the copy, and that was given to us on the morning of October 13th.

(Testimony of Charles J. Cummerford.)

Q. 1947?

A. 1947, at the Clearwater Unit, by Mr. Troy, plant manager, at a meeting held and called by him, of all the supervisors on the plant.

Trial Examiner Leff: On the morning of October what?

A. 13th.

Q. (By Mr. Elder): And that meeting was composed of who?

A. The supervisors of the plants.

Q. Now, Mr. Cummerford, will you explain for the purpose of the record, the difference between the seniority policy which has been referred to here as prior to the strike settlement, and the seniority policy after the strike settlement?

A. That is regarding?

Q. Promotion, vacations, the entire set-up.

A. The seniority set-up prior to the strike was based entirely on job, department and plant seniority. All promotions, vacations, and so forth, were based on the actual time on the plant, in the department, and on the job. After the strike, according to the strike settlement, all employees who returned prior to October 13th, guaranteed their jobs over the employees who returned after October 13th. In other words, any man on any job prior to October 13th was given the [226] right to hold that job, and on promotions, the promotion of men, the strike settlement had no effect on promotion whatsoever. All men had their seniority

(Testimony of Charles J. Cummerford.)

prior to the strike, and any promotions they were given, their jobs, the promotional jobs, and that occurred in a good many instances.

Trial Examiner Leff: Let me ask you this point, so that I get it clear: Did you participate in the strike settlement personally?

A. In my job——

Trial Examiner Leff (Interposing): Well, now, did you?

A. No, I did not.

Trial Examiner Leff: So that all you know about the strike settlement would be hearsay? In other words, would be something that was told to you by one or more other people?

A. That is right.

Q. (By Mr. Elder): After October 13th, 1947, the return to work policy as set forth in Respondent's Exhibit 2, was followed by your office?

A. Absolutely.

Trial Examiner Leff: What is the significance of that October 22nd date, do you recall? Is it something about all those who returned between October 13th and October 22d?

A. Would be guaranteed the right as set forth in the settlement. After that date they were no longer employees.

Trial Examiner Leff: I see.

Mr. Merrick: Apparently, they gave them ten days. [227]

A. To return to their jobs.

(Testimony of Charles J. Cummerford.)

Q. (By Mr. Elder): And the instructions that you received, what was your understanding of that strike settlement as to the seniority? From the instructions you received as Personnel Director, what was your understanding of the strike settlement agreement as to seniority?

Mr. George: I will object to that.

Trial Examiner Leff: Sustained.

Q. (By Mr. Elder): What was the difference between the seniority prior to the settlement of the strike and after the settlement of the strike?

A. The only difference was the men who returned prior to October 13th; their rights were guaranteed, and men who returned after October 13th, they were guaranteed the job if the job was open, and if not, they were paid at the rate of pay that they were on prior to the strike, and any promotions that come up after that, or any openings in that job, they were given the first chance.

Q. Could they bump a man who had returned prior to the settlement? A. No.

Q. What effect did this seniority policy have in the event of a curtailment in the plant?

A. It would have the same exact effect as—would you repeat that? [228]

(Last question read.)

A. The men who had returned through the picket lines, jobs would be held them, given them, over and above the men who had not returned.

(Testimony of Charles J. Cummerford.)

Q. And that was your understanding of the strike settlement? . A. That is right.

Trial Examiner Leff: When you say it was your understanding of the strike settlement, do you mean that that was reported to you?

A. Through this written report, yes, through many discussions.

Q. I call your attention to the lay-off in which Gail Cloninger was laid off due to a curtailment in the carpenter shop, as shown in the record here, and ask you if you are acquainted with Cloninger and acquainted with the lay-off that occurred on December 31, 1948? A. I am; yes.

Q. December 30th? As Personnel Director, did you determine the policy to be followed in that lay-off? A. I did; yes.

Q. And will you tell the Examiner what that policy was?

A. Connected with Cloninger particularly, or the over-all policy?

Q. Yes. I will withdraw that question. First, Mr. [229] Cummerford, tell me what caused this lay-off in the carpenter crew?

A. On account of the extreme cold weather there was no work on the carpenter crew that could be performed, and it was necessary to curtail.

Q. And why was Mr. Cloninger laid off?

A. Because his seniority would not permit him staying on the carpenter crew.

Q. And I understand by that, by the answer

(Testimony of Charles J. Cummerford.)

to that question, that there was a partial curtailment of the carpenter crew?

A. Just a partial curtailment, yes.

Q. And was Mr. Cloninger referred to your department? A. He was.

Q. And what happened to him there?

A. As soon as he reported to the department, the Employment Manager informed him of another job which he might go on immediately.

Q. And why didn't he take that job?

A. To the best of my knowledge, he was preparing grievance forms to take up in the regular procedure.

Q. And when did he take that job?

A. I believe January 6th, I am not too familiar with the records. It is just what he reported to me.

Q. I call your attention to Claude A. Walters, who was employed in the unstacker department, and was laid off on [230] January 18, 1949. Do you remember that case? A. Yes, I do.

Q. What was the reason for that lay-off?

A. We discontinued the remanufacturing in the unstacker department, and the job on which he was employed was connected with that job, with that operation.

Q. And did you handle the seniority policy as far as the lay-off in that department was concerned? A. I did.

Q. And why was Walters laid off?

(Testimony of Charles J. Cummerford.)

A. Because he didn't have sufficient seniority to maintain his job.

Q. And when he was laid off in the unstacker department, what happened to him?

A. He was offered other jobs, and it was called to my attention when this was to take place, and, then, I instructed the Assistant Personnel Director to line him up another job, which he did, and it was reported to me that he did not take the job, except a job in the replant, four days, I believe that he worked, and, then, other jobs were offered to him, and he would not accept. After about two weeks' time, I would say, Mr. Angove and Mr. Gordon approached me regarding Claude Walters, for discussion, which we usually do in regard to all cases of that kind, and wanted to know why Mr. Walters was not put on a job. I explained to him exactly what took place, [231] the jobs that were offered to him, and Mr. Gordon and Mr. Angove agreed with me at that time that sufficient had been done to give Walters a job.

Q. No grievance was filed with you?

A. No grievance was filed.

Q. The policy that you followed as far as seniority is concerned on October 13th, 1947, and since as set up in the return to work policy, or what has been designated return to work policy, and is attached to Respondent's Exhibit No. 2, is that the same policy that you used in preparing the interpretation and operation of seniority, which is Respondent's Exhibit No. 2?

(Testimony of Charles J. Cummerford.)

A. That is right.

Mr. Elder: You may inquire.

Cross-Examination

By Mr. Merrick:

Q. How long were you Personnel Manager, Mr. Cummerford?

A. Approximately seven years.

Q. And when did you leave that job?

A. July 1 of this year, 1949.

Q. In other words, you were in charge of seniority and personnel relations all during the strike period and the post-strike period?

A. That is right.

Q. Now, you state that Respondent's Exhibit 2 was prepared [232] about October, 1948?

A. That is right.

Q. You say you prepared it?

A. We made the first draft.

Q. Who was present when this draft was made?

A. It was Earl Bullock.

Q. Would you identify these people as you name them? Identify them as you name them.

Trial Examiner Leff: By reference to the position.

Q. (By Mr. Merrick): Yes, who are they?

A. Earl Bullock at the present time is public relations manager.

Q. Yes?

(Testimony of Charles J. Cummerford.)

A. Bob Burger at that time was employment manager.

Q. Yes?

A. And I believe that is all; there was just the three of us drew up the first draft.

Q. Was there any reason why you waited one year to prepare it, after the strike?

A. Not particularly, no.

Q. Do you take part in the usual grievance procedures?

A. No, not as Personnel Director, I didn't. I do now as Assistant Superintendent.

Q. Were you familiar with the grievance with regard to the railroad work shortly after the termination of the strike? [233]

A. No, I was not.

Q. Do you know if a copy of this was ever given to the Union?

A. Not to my knowledge, it wasn't.

Q. Do you think one should have been given to the Union?

Mr. Elder: I object to the question.

Trial Examiner Leff: Sustained.

Q. (By Mr. Merrick): Did Mr. Green know of this seniority policy? A. Yes.

Q. Now, when did you first see a copy of this return to work policy, as written up here?

A. When did I first see the copy?

Q. Yes.

A. The 13th morning, the 13th of October.

(Testimony of Charles J. Cummerford.)

Q. And was that prepared on the 13th?

A. I couldn't say.

Q. Where did you see it?

A. At the plant.

Q. At a meeting?

A. At a meeting of the Supervisors and the plant manager.

Q. Is this return to work policy used as a basis for preparing this interpretation of seniority?

A. As it applied to that interpretation.

Q. And you say that only Mr. Burger and Mr. Bullock were [234] present when this document was drawn up?

A. That is right.

Q. Neither of those gentlemen participated in the writing of this so-called return to work policy?

A. They did not, no.

Q. Do you know how they got their information, so as to write this particular interpretation?

A. You mean is the interpretation complete?

Q. Yes.

A. We had several forms that we followed, and the agreement was between the Company and the Union.

Q. The agreement between the Company and the Union?

A. Yes, that was the basis for the balance of it, outside of the strike settlement.

Q. You, also, paid particular reference to seniority provisions as contained in the working agreement?

A. That is right.

(Testimony of Charles J. Cummerford.)

Q. In other words, it is your understanding that seniority is something that is arrived at in negotiations between the Union and the Company?

A. That is right.

Q. Now, regarding this so-called return to work policy, which is on the last page here, how many copies of those were in existence?

Mr. Elder: I object to the question. [235]

Q. (By Mr. Merrick): Well, I will rephrase it. Did you only have one copy in your personnel office?

A. I had one copy, yes. There is one copy supplied to each supervisor.

Q. Were those posted in the various departments?

A. They were not, no.

Q. Why not?

A. I don't know.

Q. Did the Company make known this policy to the employees through the supervisors?

A. Yes.

Q. In what manner was it made known to them?

A. By verbal, by talking to the employees themselves, if they were asked their standing in the department.

Q. But they were not shown the written agreement?

A. Not to my knowledge, they were not.

Q. Are they shown written agreements of these contracts?

A. Yes.

Q. The interpretations of 1947 and so forth? Are they shown written—in other words, in rela-

(Testimony of Charles J. Cummerford.)

tion to this contract, the employees have knowledge of all the amendments that have taken place in relation to this contract, is that correct?

A. Through the Union, yes. Those books are put out by the Union to their employees.

Mr. Elder: Let him answer the question, counsel.

Trial Examiner Leff: Had you finished with your answer?

Mr. Merrick: No, I am satisfied.

Q. They were never shown a written copy of this return to work policy, though?

A. Not to my knowledge, no.

Q. Would you have any reason why they would not be shown that? A. I have no reasons.

Q. Do you know who took part in the writing of this so-called return to work policy?

A. I do not.

Q. Do you know how it arose?

A. The meeting, you mean?

Q. Yes.

A. It was a meeting between the officials of the Union and our management to settle the strike.

Q. What Company officials took part in it?

A. I could not say, I could not answer that question.

Q. Well, to your knowledge, did any of the Company officials that took part in the writing of this return to work policy help in the framing of this interpretation of the seniority policy?

A. I do not believe they did.

(Testimony of Charles J. Cummerford.)

Q. In other words, you did that yourself, you and Mr. Burger and Mr. Bullock?

A. We drew the first draft. [237]

Q. How many other drafts were drawn up?

A. Just our draft, as far as I know, which we presented to the Manager of the Company.

Q. Yes, but you never got any instructions from anyone that took part in the negotiations with the Union?

A. No. I might enlarge on that; we were asked by the plant manager to draw up our interpretation of seniority as applied on the plant, and that draft was at that time drawn.

Q. Now, is it your understanding that the seniority, also, is arrived at through an interpretation of this particular agreement?

A. That is right.

Q. Don't you think the Union should have been called in, if you are going to revise the seniority provisions of the contract?

Mr. Elder: I object to the question.

Trial Examiner Leff: Sustained.

Q. (By Mr. Merrick): You say that Mr. Claude Walters was laid off because he did not have sufficient seniority, what do you mean by "sufficient seniority"?

A. His seniority was not, he did not have as much seniority as others in the department.

Q. You mean he didn't have any strike seniority?

A. What do you mean by "strike seniority"?

(Testimony of Charles J. Cummerford.)

Q. Just that? Super-seniority as a result of the strike? [238]

A. You mean the settlement of the strike?

Q. Yes, was that the basis of his lay-off?

A. Yes.

Q. Is that, also, true of Mr. Cloninger?

A. That is right.

Q. Now, you say that no grievance was filed regarding Mr. Walters?

A. There was no grievance filed with my office regarding Mr. Walters.

Q. Is it your impression that a grievance should have been filed?

Mr. Elder: We object to that. I don't think it makes any difference what his impression is.

Trial Examiner Leff: Sustained.

Q. (By Mr. Merrick): Well, you say no grievance was filed? A. No grievance.

Q. Why should a grievance have been filed?

Mr. Elder: We object to that as argumentative, and I don't think it's material.

Trial Examiner Leff: Sustained.

Q. (By Mr. Merrick): What was the purpose of the Union officials visiting you regarding Mr. Walters? You testified on direct that two Union officials came to see you regarding Mr. Walters' troubles?

A. Yes, but you asked me why Mr. Walters had not been put [239] on a job.

Q. Was that a presentation of a grievance?

(Testimony of Charles J. Cummerford.)

A. No, that is not. That is, it is the usual practice of the plant, the business agent or the representative of the Union have always made it a practice to call on the Personnel Director when anything is out of line. We usually discuss all those things and a possible settlement outside of a grievance. If a grievance is drawn, the Personnel Director immediately withdraws from the case and has nothing to do with it after that.

Q. You usually discuss that with the Union officials? A. That is right.

Q. And you did that for a period from, say, May 1st, 1948, to May 1st, 1949? A. Yes.

Q. Is that based on this contract?

A. We have continued to operate as we did previous to May 1st.

Q. To your knowledge is that contract still in effect? A. It is not in effect.

Q. When did it expire?

A. It expired the 1st of May, 1949.

Q. Up until that time it had been in effect, up until the 1st of May, 1949, it had been in effect?

A. Yes. [240]

Mr. Merrick: That is all.

Cross-Examination

By Mr. George:

Q. After going through that policy mimeographed, I couldn't find a situation where a man worked five years for the Company, got mad and

(Testimony of Charles J. Cummerford.)

quit and stayed away from the plant a year, and, then, returned. Would he start as a new employee, or would he pick up his old employment time to apply on his seniority?

A. Well, the minute that he quits, his seniority stops, and if he is hired back, his seniority starts as of the day that he is rehired.

Q. Now, supposing that he is transferred or accepts an offer of advancement that takes him out of the bargaining unit, and stays out of the bargaining unit for, say, a period of a year or two years, and, then, for some reason or other desires to return, does he pick up his seniority again, or does it keep on, right on adding up with the Company all the time?

A. You are speaking, now, of job, department, or plant?

Q. Yes. A. Which are you speaking of?

A. I am speaking of a man, for instance, you had uniformed guards out here during the War, didn't you?

Mr. Elder: I object on this line of questioning.

Trial Examiner Leff: Overruled. What the witness asked you is whether in referring to seniority you are referring to plant seniority or department seniority.

Q. (By Mr. George): Well, what difference would it make?

A. Well, it makes a lot of difference.

(Testimony of Charles J. Cummerford.)

Q. All right, tell me the difference?

A. A man can accumulate plant seniority regardless of where he is working. He still has plant seniority on any job on the plant. On department seniority he accumulates just the seniority that he can accumulate while he is in that department.

Q. Yes?

A. (Continuing): Job seniority is the seniority you accumulate while he is on the job in a department.

Q. But I am not making myself clear to you, I guess: You have lots of people working down at that plant that aren't covered by the contract, don't you? A. That is right.

Q. Now, what I want to know is whether or not the man that worked at a job that was covered by the contract and accumulated, say, five years of seniority, and, then, he takes one of these jobs that are not covered by contract and holds it for a period of, say, two years, has he, if he wants to come back into the plant again and take a job covered by the contract, does he start as a new employee, or does he pick up where he left off? [242]

A. No, he picks up where he left off.

Q. Is he able to add the period of time while he was doing this job that was not covered by the contract?

A. That is which department you are talking about, now?

Q. Well, I don't know what these jobs are that were outside the contract.

(Testimony of Charles J. Cummerford.)

A. Well, he comes back to the department in which he left.

Q. Yes.

A. He would pick up his seniority where he left off.

Q. He wouldn't be able to add, then, this period of time?

A. Also you must understand that by employees request and by Company convenience, if we take a man off the job at Company convenience, and ask him to go on the job, then, he maintains his seniority in that department for a reasonable length of time.

Q. And what is a reasonable length of time?

A. Well, that, of course, would depend a lot on the case. Company convenience would be merely to tide us over something in which it was necessary to put that man on an emergency, or possibly illness, or something of that nature. We would determine in a reasonable length of time, reasonable, I mean, perhaps, one or two weeks, whether or not that man is going to stay on that job or in that department.

Q. Well, the point that I am trying to get clear in my own mind is that you had armed guards here during the War, that [243] were deputized, packed a gun and everything else? A. Yes.

Q. They were declared to be outside the bargaining unit, and the Union didn't have any right to bargain for them, is that correct?

(Testimony of Charles J. Cummerford.)

A. That is right.

Q. Now, if a man, if he came back to the plant and took a job in the department, shows he had been shifted out of the department to get that job, would he retain his employment status?

A. Yes.

Q. Would he gain any seniority while he was working for the Company, but as an armed guard?

A. In the department, no.

Q. But in the plant?

A. In the plant, yes.

Q. In other words, the contract was made to extend even to people that were not covered by the contract?

A. As far as plant seniority is concerned; a case of that kind has never come up. I would say that he would maintain his plant seniority on any job on the plant.

Q. Regardless of whether it is covered by the contract or not?

A. That is right.

Trial Examiner Leff: Well, I am not clear on that; [244] suppose a man had been working on some job within the bargaining unit, then, he left that job and took a watchman's job or a plant guard job on which the Union—let me go back a moment. Suppose he had been working in a production department for five years, then, went into a watchman's job for a year, and, then, went back to the productions job, how many years' seniority would he have for the purposes of promotion or lay-

(Testimony of Charles J. Cummerford.)

off, as of the moment he went back to the production?

A. Did you say five years, and a year, six years of plant seniority, five years in his department?

Trial Examiner Leff: Yes.

A. And five years on the particular job, if it was a job, or the accumulated time on the job.

Trial Examiner Leff: Well, would he gain that extra year that he worked?

A. As plant seniority, yes.

Trial Examiner Leff: Now, let me take this situation: Supposing a man starts off in a watchman's job, or some other job outside the bargaining unit, he works in that job for five years, then, he is transferred to a production job and he works in that job for one year, and, then, there is a curtailment and a necessary lay-off, how many years' seniority would he be given credit for as of the time of the lay-off?

A. The case has never come up, but I would say that he would have plant seniority for a length of time. [245]

Trial Examiner Leff: Is that how you interpret the contract? Would you give him six years' seniority as of the time of the lay-off in that situation?

A. Pardon? I believe so.

Trial Examiner Leff: Do you think the Union would agree to that?

A. Well, I can't say for the Union. I imagine

(Testimony of Charles J. Cummerford.)

the Union would be agreeable all right to that.

Mr. George: You know the Union wouldn't, don't you?

Q. Now, did I understand you correctly that you formulated this paper called the "interpretation of seniority" at the order of one of your superiors?

A. We were asked to draw our interpretation of seniority as practiced at the Clearwater unit.

Q. And how long have you followed the policy of posting the seniority ratings out in the plant on what you call the Ouija board?

A. Well, the boards, as first drawn up, I think they were about, the first board, I believe, was about five years ago.

Q. About five years?

A. And the boards, I might explain why they are not being kept up, is because they were first drawn up, they were so bunglesome and hard to handle that we decided to change our system. Now, a system is being devised, a Kardex system, and they are being drawn up just as fast as they can be, and they [246] will be on display around the plant just the same as usual.

Q. Now, when did this change of policy take place, when did you decide to call this new policy?

A. It is not new policy. What do you mean?

Q. When you changed from this Ouija board system to this card index system that you explained?

A. Well, I guess we finally decided that the

(Testimony of Charles J. Cummerford.)

form as the boards were drawn up wouldn't keep them up. They were too hard to handle, I would say about six to nine months ago it was decided that they were. I instructed the training coordinator to provide other means of showing the seniority, job progression.

Q. Well, what I am trying to get at is this: Since you compiled this mimeographed copy on plant seniority, what have you done in the way of your Ouija boards to let the rank and file know that those Ouija boards no longer represent what the seniority system is in that department?

A. They have not been informed, generally, but any man who comes forward and asks his standing is shown it on the form on the foreman's book. You understand that we maintain foremens' books in the same form that the progression boards are, and any man can go in his office and look at the seniority as shown in the foreman's book.

Q. Well, were the boards taken up, or are they still up?

A. Some cases they were taken down, and some cases they are [247] still up. They should be taken down and the new boards put up.

Q. In these interpretations as you mimeographed them, there is no contention on your part, is there, that you ever discussed them with any Union committee?

A. No, they were not discussed with any Union committee.

(Testimony of Charles J. Cummerford.)

Q. I see. Now, in regard to Mr. Walters, at the time when the Union committee came to talk to you about that, it wasn't clear to me as to what you said the position the Union committee took?

A. They merely approached me to ask why Mr. Walters was not put on a job, and I explained to them why, and that was the end of it.

Q. I see. There was no commitment on their part as to what position they were taking one way or the other?

A. Mr. Gordon made the remark that he guessed that every effort had been made to give the old man a job, but did say that he was going to go back and interview him.

Q. Go back and interview him?

A. Walters.

Q. In other words, he didn't commit himself in any final way as to what Walters, I mean, the Union's situation as to Walters, would be?

A. I was given the impression that they were satisfied, because I didn't think any more about it, more than to give the old man a job. [248]

Q. What was said that gave you that impression?

A. I beg your pardon?

Q. What was said that gave you that impression?

A. The exact words, you mean?

Q. Well, substantially.

A. Well, after explaining it to them, I believe it was Mr. Gordon said that he guessed that the old man had sufficient offers of employment, and he would go back and talk to him and see if he would

(Testimony of Charles J. Cummerford.)

not take one of those jobs, that is what the inference was I drew.

Q. That was all that he said, though?

A. That is all, yes.

Mr. George: I believe that is all.

Redirect Examination

By Mr. Elder:

Q. After this meeting between Gordon and Angove representing the Union, as far as Walters and yourself were concerned, did you hear anything more from any of the Union representatives about Walters? A. No.

Q. And later Walters did take one of the jobs?

A. Yes.

Trial Examiner Leff: Which job did he take, one in his former department?

A. He took a job cleaning up cinders all along the loading [249] dock, his former department.

Trial Examiner Leff: Is that the job he had been working on?

A. Really, that is a plant job, cleaning cinders.

Q. (By Mr. Merrick): What was the answer?

A. Really that is a plant job, cleaning cinders.

Q. It wasn't in his old department?

A. No, it wasn't in the unstacker department.

Q. (By Mr. Elder): Now, the jobs that were offered Mr. Walters during the period of time that he was off the job, in your opinion was he capable of performing those jobs?

(Testimony of Charles J. Cummerford.)

A. Yes, I am quite sure he was.

Q. Did Mr. Walters apply for a lawn tending job?

A. Yes, he did. I understood that he had applied for that job.

Q. And in your opinion as Personnel Director, was he able to handle that job?

A. If he couldn't handle a watch job, he definitely couldn't handle a lawn job, but there was not a lawn job open. There is only one lawn tender, and that man has had a long period of time.

Q. You testified that Earl Bullock was present with you, and one of your committee that drew up Respondent's Exhibit No. 2. You testified that Bullock was now public relations man; you didn't testify as to what he was at that time that you drew this up. What was Mr. Bullock's capacity at that time? [250]

A. He was still Assistant Personnel Director at that time.

Q. Working for you?

A. Yes, my assistant.

Q. Was there a Mr. Turtleson in on this committee, too?

A. Yes, that is right.

Q. What capacity is Mr. Turtleson?

A. He is Assistant Training Coordinator.

Q. Was there a Mr. Shepherd on that committee?

A. I believe Johnny Shepherd was present at the meeting.

(Testimony of Charles J. Cummerford.)

Q. And what is his capacity?

A. He is Training Coordinator.

Q. Now, you stated that after you prepared the first draft of this, that you submitted it to management. What do you mean by "management"?

A. Well, in this case it was to the Unit manager, Mr. Troy.

Q. You have no knowledge as to whether Mr. Lauschel, the Assistant General Manager, went over it or not?

A. No, I have no knowledge.

Q. But he could have without your knowing it?

A. He could have, yes.

Q. Since October 13th, 1947, have you had other curtailments, other than the carpenter curtailment here, and the small curtailment in the unstacker department?

A. Oh, we have had several curtailments, of course, on the plant. I do not call to mind any curtailment where the [251] settlement of the strike was involved.

Q. Did you have a box factory curtailment?

A. Yes.

Q. When was that, approximately?

A. Oh, it must have been about, I should say, I believe about the 1st of December, to the best of my knowledge.

Q. What year?

A. 1948.

Q. Was this seniority policy as written up here followed in that curtailment?

A. Yes, it was.

(Testimony of Charles J. Cummerford.)

Q. Was it followed in all of your curtailments?

A. It was, yes, after it was drawn up, or after the interpretation.

Q. This policy has been in effect ever since October 13th, 1947? A. That is right.

Mr. Elder: You may inquire.

Recross-Examination

By Mr. Merrick:

Q. Mr. Cummerford, regarding this return to work policy which is attached to the last page here, did you know that that was purely a verbal agreement? A. I did not know.

Q. You had never believed that? [252]

A. No.

Q. Had you believed that it was a written agreement between you?

A. I had not been told anything insofar as the agreement had been reached, a settlement between the Company and the Union.

Q. Just what had you heard about that agreement? Had you heard anything about it from your superiors?

A. Well, that is rather a large question. It was discussed on numerous occasions, the strike settlement.

Q. Yes, and this particular part of it was discussed? A. The strike settlement?

Q. This return to work policy?

A. Yes, that was discussed.

Q. Have you ever seen a copy of the strike settlement agreement? A. The original copy?

(Testimony of Charles J. Cummerford.)

Q. Yes? A. No.

Q. Have you ever seen any copy of it?

A. Of the strike settlement? No.

Mr. Merrick: May I have Exhibit No. 5?

Q. (By Mr. Merrick): Have you ever seen this document before (hands paper to witness)?

A. No, I haven't.

Q. You don't know, then, that that is the strike settlement [253] agreement?

A. Well, shall I read it and determine?

Q. Yes, you may read it.

A. (Witness reads silently.) Yes, I believe that is my undersanding of it, and to the interpretation that is written there.

Q. In other words, it's your understanding that this particular return to work policy is a part of that agreement?

A. This return to work policy is part of that agreement?

Q. Yes?

A. That was my understanding, yes.

Q. But you did not know that this was an oral agreement? A. No, I didn't know.

Q. In other words, you understood this thing had been drawn up in written form at the time of the strike settlement, is that correct?

A. Yes, that is right.

Q. Now, you say it was about one year after the strike settlement that you finally drew this particular document up, this interpretation of seniority

(Testimony of Charles J. Cummerford.)

policy? Is there any particular incident that caused that to be drawn up?

A. Not that I know of, no except that we felt that we should have an interpretation of the seniority as practiced on the Clearwater project.

Trial Examiner Leff: When you drew up this seniority [254] interpretation that you said was drawn up in October, 1948, I believe you testified before that you referred to contracts between the Union and the Company?

A. Well, in drawing that up there is various interpretations of all seniority, and it was drawn up according to that agreement as far as that goes.

Trial Examiner Leff: Well, did you consult all agreements between the Union and the Company that had any bearing at all on the question of seniority?

A. No, I don't suppose that we did, no.

Trial Examiner Leff: Did you consult this document, General Counsel's Exhibit No. 5?

A. No, I haven't seen that.

Mr. Merrick: I have no more questions.

Mr. George: No questions.

Trial Examiner Leff: The witness is excused.

Mr. Elder: Wait a minute, if I may redirect him just a moment.

Q. (By Mr. Elder): In drawing up Respondent's Exhibit No. 2, which is the seniority policy, as far as the strike settlement agreement was concerned, did you use the exhibit which is attached to that policy, entitled "The return to work policy"?

(Testimony of Charles J. Cummerford.)

A. I did.

Q. Was it your understanding that that was a part of the strike settlement? [255] A. Yes.

Q. May I see that, Mr. Examiner? Referring to General Counsel's Exhibit No. 5, which is a proposed memorandum of the strike settlement that you have just read, does it refer to promotions, vacations, insofar as seniority is concerned (hands paper to witness)?

Mr. George: I will object upon the ground and for the reason that the document is the best evidence.

Trial Examiner Leff: Objection overruled, it's a preliminary question. I think we can agree that it does not.

Q. (By Mr. Elder): All right, where did you obtain the information that you put in this policy, seniority policy, as far as promotions are concerned, and as far as vacations are concerned, and as far as the return to work policy is concerned?

A. By the agreement, our agreement with the Union.

Trial Examiner Leff: What agreement?

A. Our working agreement, dated 1946.

Q. (By Mr. Elder): And where did you obtain the policy as far as the return to work policy is concerned?

A. From this interpretation in this form.

Q. And when did you obtain that?

A. The 13th of October, 1947.

(Testimony of Charles J. Cummerford.)

Mr. Elder: That is all.

Mr. George: No questions. [256]

Trial Examiner Leff: Oh, just one question: Is this the first time that you have seen this Exhibit 5?

A. Yes.

Trial Examiner Leff: The first time is today?

A. Yes.

(Witness excused.)

Mr. Elder: Mr. Dave Troy.

DAVID S. TROY

called and sworn as a witness on behalf of the Respondent, testified as follows:

Direct Examination

Trial Examiner Leff: What is your full name?

A. David S. Troy.

Trial Examiner Leff: (Spells) T-r-o-y?

A. (Spelling): T-r-o-y.

Trial Examiner Leff: Where do you live, Mr. Troy? A. 1224-3d Street.

Q. (By Mr. Elder): What position do you hold in Potlatch Forests, Inc., Mr. Troy?

A. Manager of the Clearwater Unit.

Q. And what are your duties as manager of the Clearwater Unit of Potlatch Forests, Inc.?

A. Well, I am in charge of the supervisory staff at Clearwater mill.

Q. You are the manager of the entire operation?

A. That is right.

(Testimony of David S. Troy.)

Q. Speak up, so that the reporter can hear you. As Manager of the Clearwater plant of the Potlatch Forests, Inc., are you acquainted with the seniority policy of the Company? A. I am.

Q. I hand you Respondent's Exhibit 2, which has been identified as the seniority interpretations in operation prepared by Mr. Cummerford in his capacity as Personnel Director and a committee of the employees working in his department, and ask you if that sets forth the seniority policy as far as the Potlatch Forests, Inc., is concerned (hands paper to witness)? A. It does.

Q. I call your attention to the return to work policy which is on the last page of Respondent's Exhibit 2, and ask you when you were first advised of that policy?

A. About five minutes after the agreement was signed.

Trial Examiner Leff: What agreement?

A. The strike settlement agreement.

Trial Examiner Leff: Was signed?

A. Was signed.

Trial Examiner Leff: Was signed by whom?

A. I believe Mr. Botkin and Mr. Billings.

Trial Examiner Leff: Is this the agreement that you have reference to, General Counsel's Exhibit No. 5?

A. Yes, that is right. [258]

Q. (By Mr. Elder): Were you present at the negotiations settling the strike?

A. I was not.

(Testimony of David S. Troy.)

Q. But after that settlement you were advised of this return to work policy?

A. I was advised of the settlement, and the return to work policy was, if I remember correctly, written immediately, so we would have something to go by, uniformly speaking, at the plant.

Q. You heard Mr. Cummerford's testimony as to a meeting that was held at the plant on the morning of October 13th, 1947?

A. I called that meeting.

Q. And at that meeting did you present to the supervisors and inform them of the copy of this return to work policy?

A. I did, and it was, also, discussed.

Q. Where did you obtain the information as to what the strike settlement agreement was?

A. Mostly from the signed settlement. That was discussed.

Q. Did you discuss the matter with Mr. Lauschel and Mr. Billings?

A. I did.

Q. And who determined this return to work policy as far as Potlatch Forests was concerned?

A. I think it was determined by a group made up of management. [259]

Q. Who would that group be?

A. Mr. Billings, Mr. Lauschel, and Mr. Reddick and Mr. Huffman, and I was there, and Mr. Beardmore was there.

Q. And on October 13th, 1947, you were advised by them that this was the return to work policy?

A. That is right.

(Testimony of David S. Troy.)

Q. When did this meeting take place?

A. On October 13th, 1947, I believe, in the morning. You mean, the meeting with the supervisors?

Q. Yes. Tell me this, Mr. Troy, what is the difference as far as the operation of the seniority policy in the Clearwater plant is concerned, between the time prior to the strike and the present time?

A. Well, there is no difference excepting the men that came back to work were not to be replaced by those that came back after October 13th.

Q. And why is that policy now in effect?

A. Why?

Q. Yes.

A. Because of the strike settlement.

Trial Examiner Leff: When you refer to the strike settlement, what do you refer to?

A. This (indicating).

Trial Examiner Leff: General Counsel's Exhibit No. 5, is that right? [260]

A. Yes.

Trial Examiner Leff: You are pointing to General Counsel's Exhibit No. 5.

A. That is right.

Q. (By Mr. Elder): As far as promotions on the plant are concerned as to the present time, are they handled in the same manner as they were prior to the strike? A. They are.

Q. In referring specifically to that memorandum, there is no mention in there as to promotions, is there? A. In this?

Q. Yes.

(Testimony of David S. Troy.)

Trial Examiner Leff: General Counsel's Exhibit No. 5.

Q. (By Mr. Elder): Yes.

A. (Witness reads silently.) No.

Q. So, actually, how did you arrive at this return to work policy?

A. Well, that was, undoubtedly, agreed upon verbally. The strike settlement, because that was very definitely part of the strike settlement when the return to work policy was written.

Q. And who advised you of that on this October 13th, 1947?

A. The same group that met immediately after the agreement was signed. [261]

* * *

Mr. Elder: This witness was not present as he has testified, at the time the strike settlement agreement was arrived at, therefore, he cannot testify as to what the strike settlement agreement contained. The purpose of the questions [262] was to find out from this witness where he received the return to work policy. In other words, he is a plant manager here operating under a seniority policy. In other words, where did he receive the instructions as to that policy, that is what we were trying to bring out. If Counsel here wants to stipulate that we have been following this policy as set out in Respondent's Exhibit 2 since October 13th, 1947, we will so stipulate, and these witnesses will not be necessary.

(Testimony of David S. Troy.)

Trial Examiner Leff: Now, just so that we will be clear, when you refer to the policy, are you talking about this entire document, or are you talking about the return to work policy?

Mr. Elder: The return to work policy is what we are talking about, that is the issue here.

Trial Examiner Leff: Will you so stipulate?

Mr. George: The stipulation as worded is a little misleading. It appears to me if they would change it slightly, we probably would stipulate. What the Company secretly had in the back of their mind, we don't know. All we want to know is whether they had knowledge of it.

Trial Examiner Leff: Now, all we want as a stipulation from you is, since October 13th the Company has been following the return to work policy which is set out in this document, Respondent's Exhibit 2.

Mr. Merrick: I don't think I can stipulate on that, [263] because I don't have knowledge. I would stipulate as to Cloninger and Walters.

Trial Examiner Leff: It seems to me that that is precisely what the General Counsel alleges in his complaint. I think if Respondent is willing to stipulate, I don't see why you should have any hesitancy.

Mr. Merrick: The material allegations as to Cloninger and Walters is what I am primarily interested in, anyway. I will stipulate it.

Mr. George: Yes, I think I can stipulate that.

(Testimony of David S. Troy.)

Trial Examiner Leff: The stipulation is approved. Perhaps, we can save some time.

* * *

Trial Examiner Leff: While Counsel is looking for that Exhibit, I should like to ask you this question: Referring to General Counsel's Exhibit No. 5, which I hold in my hand, have you ever seen this, or a duplicate of this, before this hearing (hands paper to witness)?

A. Yes.

Trial Examiner Leff: When did you first see it?

A. I saw the original immediately after it was signed. [264]

Trial Examiner Leff: Under what circumstances did you come to see it?

A. The strike was over.

Trial Examiner Leff: Yes, now, who showed it to you?

A. Mr. Billings, the General Manager.

Trial Examiner Leff: And what did he say at the time he showed it to you?

A. We all read it, and he told us the strike had been settled.

Trial Examiner Leff: Was this on October 12th or October 13th?

A. I don't recall. It seems to me it was the 12th, maybe I am wrong.

Q. (By Mr. Merrick): Was it Sunday night, do you recall? Was the plant working on that day?

A. No. If it actually was on Sunday, I imagine, it was the 13th I first saw it.

(Testimony of David S. Troy.)

Trial Examiner Leff: Did he show you any other document at the time he showed you this?

A. No.

Trial Examiner Leff: Now, was this the only document that he referred to when he referred to the fact that the strike had been settled?

A. That is right.

Trial Examiner Leff: I am referring, now, to General [265] Counsel's Exhibit No. 5?

A. Yes.

Q. (By Mr. Elder): Did he at that time tell you how promotions were to be handled after the strike settlement? A. He did.

Q. And what was that?

A. The employees returning to work after the strike would not be affected in any way in regard to promotions, that is, they would accept the promotions as they developed any advance in work.

Q. What else did he tell you?

A. That the employees who had been working would not be replaced by the returning workers after October 13th.

Q. I hand you General Counsel's Exhibit No. 11 and ask you to examine it, and ask you further if the signature appearing on the second page is your signature (hands paper to witness)?

A. Yes, it is.

Mr. Elder: You may inquire.

(Testimony of David S. Troy.)

Cross-Examination

By Mr. Merrick:

Q. Mr. Troy, how long have you worked at the Clearwater plant? A. Twenty-two years.

Q. How long have you been manager? [266]

A. Oh, I think five years.

Q. Have you taken part in contract negotiations and other labor relations? A. I have.

Q. Do you take part in the interpretations of the '46 contract? A. Yes (nods).

Q. Do you recall if you took part in the negotiations in the Spring of '47 and the Spring of '48?

A. I think I sat in on all those meetings.

Q. Did you take part in the negotiations this year, the ones that were done? A. Yes.

Q. Now, you stated that you first saw the strike settlement, agreement which is General Counsel's Exhibit No. 5, on the night after the strike was settled, or the night of the strike settlement?

A. I don't remember what it was, but it struck me it was in the morning, and it was the same day it was settled that I saw it, I am sure.

Q. And regarding the return to work policy, can you tell me when you first saw that?

A. As I remember it, that was an outcome of a meeting of this group that I mentioned in Mr. Billings' office shortly after the strike was settled.

Q. And was it your impression that that return to work policy was prepared by the company?

A. Yes.

(Testimony of David S. Troy.)

Q. Were the Union officials still present in the building when that was prepared?

A. They were not.

Q. To your knowledge, was a copy of that ever sent to the Union? A. I don't know.

Q. Do you think it was?

A. I don't believe so.

Q. As a matter of policy, do you think it should have been?

Mr. Elder: I object to that.

Trial Examiner Leff: Sustained.

Q. (By Mr. Merrick): Now, the seniority policy that was followed by the Company regarding promotions, what is the source of that seniority policy?

A. Well, that came out of the strike settlement.

Q. Well, doesn't that, I thought that was not covered in the strike settlement?

A. Undoubtedly it was covered some way or other, because it was very definitely fresh in the minds of our people, anyway, that made the strike settlement, or were there when the strike settlement was made.

Q. It was your impression, though, that it comes out of the [268] strike settlement agreement and not out of the prior bargaining contract in effect between the Union and the Company?

A. Well, that wasn't changed insofar as the contract was concerned.

Q. That particular aspect of the contract was

(Testimony of David S. Troy.)

not changed by the strike settlement? In other words, then, it arises from this contract?

A. Originally.

Q. You stated that it was your impression that the return to work policy was drawn up because you wanted to have something to go by? In other words, is it your policy to put into writing all of these various transactions?

A. I wanted all of our foremen to know exactly what was covered in the strike settlement.

Q. Now, you had knowledge of the return to work policy right after the strike settlement, is that correct?

A. Very shortly after.

Q. Why was there a wait of one year before the interpretation of the seniority clause was drawn up?

A. I think I can explain that. I talked to Mr. Lauschel about our seniority policy, and thought that it might be a good idea to have our seniority policy the same in all of the units, that is, at Potlatch and Coeur d'Alene and Lewiston, so that we were all doing the same thing, and to start that I asked Mr. Cummerford if he would take his committee or boys [269] that were in his department, and draw the first draft of what we had been doing for years, not just since this strike, but what we had been doing for a considerable length of time, and Mr. Cummerford did that and submitted it to me, and, in turn, we had a meeting of the present plant management, managers and Mr. Beardmore, and we made very few changes. In

(Testimony of David S. Troy.)

fact, I don't remember what changes were made, it was changed but very little, and the whole reason behind it was to have a uniform working policy.

Q. In other words, you worked out the finished copy of the draft?

A. The plant managers did that.

Q. Did you send a copy to the Union?

A. I did not.

Q. Who was the Mr. Huffman that you referred to that took part in some of these meetings?

A. Mr. Huffman is assistant general manager of Potlatch Forests.

Q. I would like to call your attention to General Counsel's Exhibit No. 11, do you recall what Mr. Gordon's attitude was regarding the settlement which was worked out under Step No. 4? Is this your writing here, this word "over"?

A. Yes.

Q. What was Mr. Gordon's attitude regarding that grievance (hands paper to witness)? Well, first, maybe I had better [270] rephrase it: Was it your impression that he did not accept the Company's interpretation of the seniority policy?

A. No, he did not.

Q. He did not accept it?

A. He did not accept it.

Mr. Merrick: That is all. Your witness.

(Testimony of David S. Troy.)

Cross-Examination

By Mr. George:

Q. How long did you say you have been with the Company in connection with their labor relations?

A. Well, I haven't been connected with their labor relations since I have been with the Company, but I have been with the Company twenty-two years.

Q. And how long have you been dealing with the C.I.O.?

A. I didn't hear you?

Q. How long have you been dealing with the C.I.O.?

A. Ever since they became the bargaining agent.

Q. And you were familiar with the policy that the committee from the Union that meets with you always has, to take it back and have it ratified by the rank and file before it means anything?

A. That is right.

Q. Now, in this strike negotiations, what was said to you when they came out and told you the strike was settled, about the arrangement to have the referendum taken of the rank and file of the Union? [271]

A. It had to be taken back and ratified by all the Locals. If I remember rightly, it was going to take a few days' time or a day or two's time.

Q. I see. And the document that they were to take back was this document that is General Counsel's Exhibit 5?

A. Yes.

(Testimony of David S. Troy.)

Q. I see. And was it to be any other document they were to take back and vote on?

A. I don't think so.

Q. I believe I understood you to say that this back to work policy was never tendered or given to the Union at all?

A. No, we were led to believe that the Union was going to sell the settlement to their own Locals.

Q. Well, was it your understanding that this General Counsel's Exhibit 5 contained everything that there was in the strike settlement?

A. I don't believe so. I think promotions isn't mentioned here. That was definitely part of it. I think there were some things in the strike settlement that were agreed to verbally, that were, perhaps, not written or included in this document.

Q. Was there any intent there to try and fool the rank and file as to what the strike settlement was?

A. It appeared that way.

Q. Who was going to do the fooling? [272]

A. I imagine the people that signed the Union plan, that initialed the strike settlement.

Q. Well, there isn't any way the rank and file would have known, then, what the strike policy was, is there?

A. I wouldn't know.

Q. You have a pretty thorough personnel system, don't you?

A. Yes. I didn't think it was our responsibility to notify the rank and file of what we thought the strike settlement was. It was agreed upon between the parties concerned.

(Testimony of David S. Troy.)

Q. Do you know from your information that comes across your desk every day, and following the time of the strike, as to whether or not the men ever did vote on this back to work policy?

A. No.

Q. Do you know that they did not?

A. I don't know.

Q. Who was the man that advised you of what this strike settlement was?

A. Mr. C. L. Billings and Mr. Otto Lauschel, both of them.

Q. Both of them together?

A. I think they were both there, yes.

Q. Since you have been dealing with the Union, has it not been your policy that when there were any changes to be made in the contract, that they had to be reduced to writing? A. Yes. [273]

Q. And if there was a change, it had to be referred to the rank and file to be ratified?

A. I have been under that impression, yes.

Q. I see. And you expected that that same procedure would be used in the strike settlement?

A. Well, I really didn't give it any thought, but I imagined that it would be.

Q. Do you know of any instance where there ever has been a change in the contract that hasn't followed that same procedure, that is, reduced to writing and referred back to the rank and file?

A. Not definitely, no.

Q. Now, with regard to your document which

(Testimony of David S. Troy.)

you had drawn up to inform your superintendents as to your seniority policy: Was that ever referred to the Union?

A. Not to my knowledge, no.

Q. Did that appreciably change the existing contract?

A. It did not, the only change was on the strike settlement.

Q. Well, there was a change, then?

A. This knowledge that these boys got together in this seniority document was made up over a long period of years. It wasn't just since the strike. It was an accumulation of how we had handled seniority since 'way back.

Q. Yes, but that document only expresses your idea of what [274] it is, it isn't an idea that was arrived at jointly with the Union?

A. But it was primarily written to conform with the regulation agreement.

Trial Examiner Leff: What agreement?

A. The 1946 agreement.

Q. (By Mr. George): And that was the agreement that was in force up until just this last May?

A. Well, there were some changes in it, I believe, made a year ago, but it was the original agreement.

Q. I notice that this document which we call the strike settlement document, makes reference to a contract, it says, Section 5 reads, follow it with me: (Reading) "The present contract will remain

(Testimony of David S. Troy.)

in effect without change except if the following is substituted and pertains to the Union maintenance clause," what contract was that talking about? What contract was in effect?

A. It is talking about the 1946 contract.

Q. With its amendments? A. Yes. [275]

* * *

OTTO H. LAUSCHEL

called and sworn as a witness on behalf of the Respondent, testified as follows:

Direct Examination

Trial Examiner Leff: What is your full name?

A. Otto H. Lauschel.

Trial Examiner Leff: Your address?

A. 600 Third Avenue.

Q. (By Mr. Elder): What position do you hold with the Potlatch Forests, Inc., Mr. Lauschel?

A. At this time?

Q. Yes? A. Acting General Manager.

Q. And what position did you hold in October, or during the year 1947?

A. I was Assistant General Manager.

Q. As Assistant General Manager of the Potlatch Forests, [276] Inc., did you sit in on the settlement of the strike that occurred on August 7th, 1947?

A. I did.

Q. When was the first time you were approached

(Testimony of Otto H. Lauschel.)

by the Union as to negotiations for the settlement?

A. I believe it was about October 3d, at least the latter part of that week.

Q. Who was the first person that contacted you?

A. Mr. Fadney.

Q. Mr. Fadney? A. And Mr. Burkes, yes.

Q. And what resulted from that contact?

A. Nothing, no settlement.

Q. And when did you next hear from the Union regarding the settlement? Or from any one?

A. I think it was the following Monday, I was out of town in the morning, when I was in Spokane, and returned in the afternoon, and Mr. Billings told me that Mr. A. L. Roth of the Weyerhaeuser Timber Company had called him and said that he had been contacted by George Brown and Al Hartung, and they had told Mr. Roth that they realized that there was no direct connection between the timber company and Potlatch Forests, but asked if he would intercede with Mr. Billings and arrange for a meeting with him for Mr. Brown and Mr. Hartung. [277]

Q. And did a meeting result from that?

A. It did, on the 7th.

Q. That meeting was on the 7th of October, 1947? A. That is right.

Q. And who attended that meeting?

A. Mr. Billings and myself and George Brown and Mr. Hartung.

Q. And where was that meeting?

(Testimony of Otto H. Lauschel.)

A. In Mr. Billings' office.

Q. And where is that?

A. In the Brier Building.

Q. Lewiston?

Trial Examiner Leff: May we have these people identified? Who is Mr. Billings?

A. Mr. Billings at that time was Vice President and General Manager of the Company.

Trial Examiner Leff: And who is Mr. Brown?

A. Mr. Brown is a C.I.O. representative, I believe, Western representative, wasn't he, Al?

Mr. Hartung: Director of Organizations of I.W.A.

Trial Examiner Leff: Mr. Hartung?

A. Mr. Hartung was organizing representative for the C.I.O.

Trial Examiner Leff: Thank you.

A. (Continuing): They explained to us at that time that they were not officers of the I.W.A., but were in a position of high advisory capacity. [278]

Q. (By Mr. Elder): And what took place at that meeting on the 7th?

A. Well, they told us that they felt that the strike was in a bad way, that some settlement should be made, and felt that they wanted to find out how we felt about points of settlement, and what would be done, what could be done to settle the strike.

Q. And what was discussed and what was settled? A. Well, the differential, for one.

(Testimony of Otto H. Lauschel.)

Q. What was the decision on the differential?

A. We advised them that under no circumstances would we damage the present differential.

Q. And what else was decided at that meeting?

A. Another point that came up was the matter of the maintenance of membership clause in the contract, which we said would not be tolerable after the strike was settled.

Q. And what else?

A. Well, the matter of taking care of the men who had come back prior to the end of the strike.

Q. And what was decided at that meeting on that question?

A. We told them it was our firm opinion that we would not under any circumstances allow any of those men to be replaced.

Q. By the men coming back?

A. By the men coming back to work after the strike.

Q. All right, was there an agreement finally reached at [279] that meeting? A. No.

Q. And when was the next meeting after the 7th?

A. I would like to go on on another point of discussion at that particular meeting, to bring Mr. Hartung and Mr. Brown up to date. We told them that on that morning we had had something like 1750 men at work, and we enumerated just about how they were, where they were working, and they said that that agreed to the latest figures they had.

(Testimony of Otto H. Lauschel.)

Trial Examiner Leff: How many men did you have at work just before the strike began?

A. About 2600.

Q. (By Mr. Elder): Anything else at that meeting on the 7th of October?

A. Well, we discussed local unions to some extent, but it was a very, very pleasant and fine meeting. We felt that we had probably had contact with the best men we had met yet, met up to that time, and when they left they said they had to go to Portland that night, and were scheduled, I believe, to leave on the next day or very shortly, for the big meetings back in Detroit and Boston, and they said they would go down to Portland that night and tell the Union down there about their matter, or talk with us, and that we would hear from them very shortly.

Q. All right, and did you hear from them? [280]

A. We did.

Q. When was that?

A. Well, I think probably the 8th. In any event, we had a meeting on the 9th.

Q. Of October?

A. Of October, with Mr. Botkin and Mr. Eggers.

Q. And who else was present at that meeting?

A. Mr. Billings and myself.

Trial Examiner Leff: If you will identify Botkin and Eggers?

Q. (By Mr. Elder): And where was the meeting held?

A. In Mr. Billings' office.

(Testimony of Otto H. Lauschel.)

Q. Who was Botkin and Eggers?

A. I don't know their official positions. Mr. Botkin was with the I.W.A., C.I.O.

Mr. Elder: Could we stipulate what their positions were?

Mr. Hartung: Mr. Botkin was the first vice president at that time. Mr. Eggers was a member of the Northwest Regional negotiating committee for the C.I.O. for the I.W.A.

Q. (By Mr. Elder): And what was discussed at that meeting, Mr. Lauschel?

A. Just about the same things that were discussed with Mr. Hartung and Mr. Brown.

Q. And was any agreement reached at that meeting? [281] A. No.

Q. And what happened to terminate that meeting? What was it?

A. Well, we finally drew up a tentative set-up of points that we wanted covered in any settlement of the strike, and we wrote those jointly between the four of us, and they took these recommendations and said they wanted to talk to their group, and we would hear from them later.

Q. All right, and, then, when did you hear from them next? That meeting was on the 9th?

A. That was in the morning.

Q. Yes?

A. Then, in the afternoon they called again for another meeting, and brought a typewritten paper in to us.

(Testimony of Otto H. Lauschel.)

Q. Just a moment, who was at this afternoon meeting? Tell who was there and who was with you?

A. The same four.

Q. The same four in the same place?

A. Yes.

Q. They brought you in what?

A. They brought in this set of points that we had drawn up, substantially as we had it, as I recall it, except, could I see that exhibit, the strike settlement?

Q. It must be this (hands paper to witness).

A. (Continuing): Except for this No. 2, which says, [282] "All former employees of Potlatch Forests, Inc., will return to work without discrimination," and they had in there, "or loss of seniority," and we told them that the thing was all right except for that, and we would not agree to that wording in there.

Q. Now, why wouldn't you agree to that?

A. Because it would establish the full seniority without the provision to protect the men who had come back on the job.

Q. And had they agreed?

Trial Examiner Leff: Is that what you told them?

A. Yes.

Q. (By Mr. Elder): And they had agreed to that?

A. No, they didn't agree to it, but they finally, they said, "Well, can we be excused," and they went out in the hall there at the office and came

(Testimony of Otto H. Lauschel.)

back in a few minutes with that stricken out.

Q. And what agreement as far as seniority did they agree to, Mr. Lauschel?

A. Well, in the first place, when they came back with that stricken out, we asked them why they didn't want to mention seniority.

Q. They told us that they thought it would be difficult enough to sell their membership on a settlement which didn't entail some gain in the way of the differential, without any mention of seniority. It was just further complicating their [283] sales job.

Q. Now, that meeting was in the afternoon of October 13th? A. 10th, I believe.

Q. 10th? And when was your next meeting?

A. Well, they were to take that agreement, then, in that form to their Locals, and said they would have to hurry to get it all approved before the back to work on Monday the 13th, and the next we heard from them was Sunday evening, I believe, it was late in the afternoon or Sunday evening.

Q. And who was at that meeting?

A. Mr. Botkin and Mr. Billings and myself.

Q. Mr. Eggers was not present at that meeting?

A. That is right.

Q. And was that the final meeting of your negotiations? A. Yes.

Q. As far as seniority is concerned, Mr. Lauschel, what was the agreement on the strike settlement?

(Testimony of Otto H. Lauschel.)

Trial Examiner Leff: What was said?

Q. (By Mr. Elder): That is right?

A. On the what?

Q. As to the seniority of the employees, what was said at this meeting as far as that?

A. We didn't feel, any of us, that their seniority would be affected in any way except in the way of a curtailment.

Q. And what would happen in the way of a curtailment? [284]

Mr. Merrick: Could I interrupt? Are you referring to the October 12th meeting, now?

A. No.

Trial Examiner Leff: What meeting are you referring to?

A. The 10th.

Trial Examiner Leff: Well, instead of saying how you feel, we have to get the evidence in legal form. I would like to know exactly what was said on the subject. Please let us know who said what, and exactly what was said.

A. Mr. Billings and I, I just don't know who said what. When I say "we" I mean either he or I.

Trial Examiner Leff: That is good enough.

A. (Continuing): And when I say "the Union" I don't know which one, whether Mr. Eggers or Mr. Botkin.

Trial Examiner Leff: Let's have the conversation on that point, that is, Mr. Billings or you, and what the Union representatives said on that point?

A. On which point?

(Testimony of Otto H. Lauschel.)

Trial Examiner Leff: On the point of seniority, just the substance, as nearly as you can remember.

A. Well, there was quite an awful lot of conversation about that particular point, and they objected to it. And, finally, when the Union said that they didn't feel that any mention of seniority should be put in writing in the memoranda of agreement, Billings said, "Well, maybe that is all right, [285] too," and there wouldn't be any effect of it felt until there was some serious curtailment, and nothing like that was in prospect.

Q. (By Mr. Elder): What was said to the Union at this meeting on October 10th as to the position of the Company as to seniority and the strike settlement agreement?

A. Well, the position of the Company would be that we agreed all through the thing that there be various things that would have to be straightened out, such as the vacation clause, because any men that had been off for two months under the vacation clause as it was then written in the contract, would not be eligible for vacation, and we agreed that we would re-write that so that for vacation purposes all men returning would retain their seniority also, that all men would retain their seniority for promotion, and if their jobs were occupied before they came back, they would be put into other jobs on that and paid at the rate which they had been paid when they went on strike.

Q. Now, about the replacement of employees that were working at that time?

(Testimony of Otto H. Lauschel.)

A. No employee would be replaced by any man returning after October 13th.

Mr. Merrick: Can I interrupt here: Is it his testimony that the Union agreed to that?

Mr. Elder: It will be. [286]

Mr. Merrick: We haven't got to your agreement yet.

Mr. George: One further point: The time and place where this last conversation took place?

Q. (By Mr. Elder): He was talking about the 10th of October, is that correct?

A. Yes, the 10th.

Mr. Merrick: The next to the last one.

A. Of course, that same conversation was made, Mr. Brown, in all the conversations we had, it all revolved around those points.

Q. (By Mr. Elder): Was that matter discussed in your meetings of October 12th?

A. Yes. [287]

* * *

Q. (By Mr. Elder): You have, just before the discussion here, repeated the several propositions which were presented to the Union by you and Mr. Billings at this meeting. My question was whether or not the Union, at the meeting on October 10th, and at the meeting on October 12th, agreed to that?

A. Well, I can't say that they agreed to it. We took it that they agreed to it when they took his paper and said that [291] they were going to present that to their Locals. That is the only assumption we could make.

(Testimony of Otto H. Lauschel.)

Q. Didn't they——

Trial Examiner Leff (Interposing): Pardon me, a moment, when you refer to this paper, so that the record will be clear, are you referring to General Counsel's Exhibit No. 5?

A. That is right.

Q. (By Mr. Elder): Were there, Mr. Lauschel, other agreements besides those contained in General Counsel's Exhibit No. 5, as far as the strike settlement is concerned?

A. The agreement was on the seniority clause, the lack of understanding with them was that this return to work would not jeopardize the jobs of men who had come back from the strike.

Q. Did they tell you at that meeting that they agreed to that? A. Yes.

Mr. Elder: You may inquire.

Mr. George: I move at this time that the testimony of the witness be stricken.

Mr. Merrick: I also join in that motion. The testimony relative to the alleged oral contract.

* * *

Trial Examiner Leff: I will let the witness' testimony stand. Proceed with your cross-examination.

Cross-Examination

By Mr. Merrick:

Q. Is that pronounced Mr. Lauschel?

A. Lauschel, yes.

(Testimony of Otto H. Lauschel.)

Q. Mr. Lauschel, when was the approximate date of your first approach by Mr. Fadling?

A. Why, I think it's about October 3d, as I recall it. It was some time in the week prior to Mr. Brown and Mr. Hartung's visit.

Q. Did Mr. Fadling come and see you personally?

A. Mr. Fadling and Mr. Burkes, yes.

Q. What did Mr. Fadling have to say about the strike? What was his attitude regarding the strike? In other words, [295] did he admit that the Union had lost the strike? Was that the basis that he approached you on?

A. No, I don't believe he did, but he said it was dragging along, and he wanted to know what kind of a settlement could be made on it, and if we were willing to concede any part of the differential.

Q. Well, to put it another way: Would you say at that time that the Company was in a position where the Union had to come to them?

A. That is right.

Q. That means, they were not in a good bargaining position?

A. That is right.

Q. Most of the men had returned to work, and things were not going too well for the Union?

A. That is right.

Q. Now, you said that Mr. Eggers and Mr. Botkin approached you after you had had your interview with Mr. Hartung and Mr. Brown?

A. That is right.

Q. Generally, what was the situation after Mr.

(Testimony of Otto H. Lauschel.)

Hartung had left town, regarding this settlement agreement? In what status was it when they had left, had the details been agreed upon?

A. No, they didn't agree to anything, they merely listened to us, and we talked the whole situation over, the strike [296] situation, and return to work movement.

Q. Did they say why they wanted to call in Mr. Eggers and Mr. Botkin?

A. They didn't say who they wanted to call, they just simply said that they were making this inquiry to see if some basis for settlement couldn't be arrived at.

Q. They were anxious to settle? A. Yes.

Q. Now, in the two meetings that you had on the 10th and on the 12th——

A. (Interposing): I think there was one on the 9th, too.

Q. Well, the 10th and the 12th were when Botkin was there?

A. On the 9th, weren't they here on the 9th, too?

Q. No.

A. We had a preliminary meeting on the 9th at which we discussed the various points that we insisted be included in the settlement.

Q. Well, when was the first meeting where you maintained there was more or less an agreement what the seniority policy was to be, was that the meeting on the 10th, the afternoon of the 10th?

(Testimony of Otto H. Lauschel.)

A. Yes.

Q. And the conversation on the 10th and 12th was more or less the same, then, is that correct, regarding the two meetings? [297]

A. Well, on the 12th there wasn't a great deal of conversation. Mr. Botkin, as I recall, was alone, and Mr. Billings and myself. Mr. Billings called me at the home.

Q. What I want to point out, you maintain then, that the last meeting Mr. Eggers attended you had more or less agreed upon this seniority?

A. That is right.

Q. And your final meeting more or less went over the same material that had been covered when Mr. Eggers had been there?

A. The final meeting was.

Q. You say Botkin was there alone?

A. Botkin was alone.

Q. But on the meeting that Mr. Eggers had been there, the preceding meeting, the same points had been agreed upon? A. Yes.

Q. There wasn't any real, material difference between the two meetings?

A. The 10th and the 12th?

Q. Yes.

A. The 12th was more or less a meeting to bring this thing into a close. We had to assume that they had taken this up with their membership, their Locals, and brought it in for final settlement.

Trial Examiner Leff: Excuse me a moment, when was this thing initialed? [298]

(Testimony of Otto H. Lauschel.)

A. Sunday evening.

Trial Examiner Leff: October 12th? Was that after it was submitted to the membership?

A. We don't know whether it was submitted, but we understood that it had been.

Q. (By Mr. Merrick): Now, Mr. Lauschel, on direct examination, you say that you had assumed that the Union officials had agreed to this seniority clause; just what did they say that led you to believe that they had assumed this contract? You say that you assumed that they had agreed to it, did they come right out and say that they had agreed to it?

A. I don't believe that they ever did.

Q. At any time did they say that they had agreed to this seniority provision?

A. They agreed to the return to work rules that we had laid down.

Q. But did they specifically agree to follow the policy of strike seniority for men who came back prior to the end of the strike? Did they specifically agree on that?

A. We had to assume that they did when they took out that "without loss of seniority" wording out of that settlement.

Q. In other words, when they struck that particular clause out of that contract, you took that act for their assumption of agreement?

A. Yes. [299]

Q. They never said that they agreed specifically?

(Testimony of Otto H. Lauschel.)

A. We didn't ask them to when they took that out, and we asked them why, and they said that they felt it better not to put in wording in there about seniority.

Q. Now, Mr. Lauschel, I think you testified that the Union at the time was in a bad position, they came to you looking for a settlement. Do you think it's reasonable that you would allow them to do something like that where you could make them put it in writing?

Mr. Elder: I object to the question.

Mr. Merrick: I will withdraw it. That is all I have.

Cross-Examination

By Mr. George:

Q. It isn't clear to me yet, the sequence of events, Mr. Lauschel; when was this matter submitted to the rank and file with reference to the time when you and Botkin and Eggers drew up these five points? Was it before the document was initialed by you, or was it after?

A. It was after.

Q. After you initialed it?

A. What do you mean? State your question again.

Q. I am asking at what time were these five points to be submitted to the rank and file to approve, before you initialed it or after?

A. Before. [300]

Q. Before you initialed it?

A. Yes.

(Testimony of Otto H. Lauschel.)

Q. Well, when was there an agreement as to what points would be submitted to the rank and file arrived at?

A. On the 10th, in the afternoon of the 10th.

Q. When you got together with Eggers and Botkin to draw up these five points, was there any agreement between the four of you as to what the five points would be?

A. Yes, these five points, as well as these other oral, verbal points that we have been talking about.

Q. Well, was there any agreement as to what you would submit to the membership, among the four of you?

A. We couldn't absolutely, couldn't say what they were going to present to their membership. We presumed they would present everything that was involved in the settlement.

Q. Well, I don't quite understand, it isn't clear to me why you would have part of it typewritten, and part of it not typewritten. Can you explain that to me so I understand it?

A. Well, we were dealing in good faith to get this strike settled. We had to assume that the Union was doing the same thing.

Q. That is right.

A. (Continuing): Now, if they didn't understand it, why, we have no—we can't be held responsible for what they didn't do. [301]

Q. You still haven't answered my question as to why part of it was typewritten and part of it wasn't, if there was such an arrangement?

(Testimony of Otto H. Lauschel.)

A. Well, we were most concerned with protecting these men, for one thing, who had returned to work.

Q. Is that as close to an explanation as you can give, as good an explanation as you can give?

A. What is that?

Q. I say, you can't explain it any more clearly than that?

A. The rest of it was just points in which we were conceding to the Union what we would do, how we would handle promotions, vacations, and matters of that kind, those accepted.

Q. You said there was a lot of discussion about seniority. I believe, isn't the truth and the fact of the matter there wasn't so much discussion about seniority as there was about replacement of strikers, the people who had gone through the picket lines and the people who had returned back to work?

A. That is right.

Q. And seniority, itself, wasn't mentioned at all?

A. Oh, yes, it was mentioned, because when they had in there "without loss of seniority" we would not go for it.

Q. Didn't you tell them that it is a point that probably is of no importance anyway, because there is no danger of anybody being laid off for some time to come? [302]

A. That is right.

Q. After that was said, wasn't that the time when both parties agreed that the word "seniority" would be deleted from this typewritten paper?

(Testimony of Otto H. Lauschel.)

A. They had agreed to it before that. That was merely a comment as we closed the meeting that evening.

Q. And the meeting that you had with Mr. Botkin by himself, there was no agreement talked about that evening, simply a report, wasn't it, as to what the Union membership had been doing?

A. Yes, and, also, we asked him if he had presented all of the points involved in the settlement concerning their vacations and promotions and the status of the strikers.

Q. Now, you understood at this time, and both parties understood at this time, did they not—I will withdraw the question.

Q. You have had the policy, since you have been dealing with the C. I. O., to have all of your contractual relations reduced to writing, have you not?

A. Yes.

Q. And every time that you have had a modification of any contract, it had to be in writing?

A. That is right.

Q. That is right? And you have, also, thoroughly understood that whatever Union members have to deal with you as a [303] committee, that it always had to be adopted by the rank and file before it became effective as a contract modification?

A. That is right.

Q. And in this particular document you have in front of you, General Counsel's Exhibit, what is it, I can't remember, 5, the strike settlement, was

(Testimony of Otto H. Lauschel.)

not that prepared in your office? A. It was.

Q. And it was the points that you and this committee had mutually agreed to submit to the membership? A. That is right.

Q. And the Union was supposed to submit those points to the membership, that is the committee, if they kept faith with you, would submit those points?

A. Those and everything, all the conversations that had been going on, with the other points.

Q. Well, now, let's get back to that: Why would there be a change in their policy? What was there about this situation that would be a change of policy, if this was not part of it, it would have to be in writing?

A. You will have to understand that on Friday the time was running short. We had already agreed that if this was approved they would go to work the following Monday morning. We were under pressure, the Union was under pressure to get this settlement before their people. On Sunday evening we had no opportunity to do anything about it at all, all we had [304] was several copies of this.

Q. Do you recall what they call the railroad beefs, the railroad beefs?

A. Shortly after the strike?

Q. Yes. A. Yes.

Q. About how long was that after the strike?

A. Well, it started the morning that they went back to work.

(Testimony of Otto H. Lauschel.)

Q. I see. By the time it got to you as a beef, it was about how long after the strike had been settled?

A. I can't recall that.

Q. A week or two or three weeks?

A. Oh, it must have been at least that.

Q. Isn't it a fact at that time the beef came to you, it was a beef that involved the application of seniority and the Union was greatly alarmed that you were putting into effect what appeared to them at that time was this plan, this Company policy that we talked about this morning?

A. Mr. Botkin and Mr. Eggers appeared at our office, I believe, on the afternoon, either the morning or the afternoon, of the 13th, the day the men went back to work.

Q. And didn't they complain to you at that time on the conduct of the foreman and the way he was handling it, and didn't you make the remark to them that that foreman couldn't [305] have known what you had in mind for a policy, because there hadn't been anything out of your office to them to inform them?

A. No, that is not what we told them. We told them that we thought it was very much out of order for them to come in with a matter involving that kind of a situation before the men had even got back to work, until our foremen and superintendents knew how many men were coming back to work.

Q. I see, the foremen at that time, themselves,

(Testimony of Otto H. Lauschel.)

hadn't even been notified at that time, had they, as to what your policy was going to be?

A. No, not thoroughly, but we told both Eggers and Botkin that we thought they were entirely out of order coming that soon, until the policy had been thoroughly formulated as the result of the strike, and, also, until we knew how many men had come back to their jobs, and just where everyone stood.

Q. Well, Botkin was the man that brought that beef to you, wasn't he?

A. Botkin and Eggers, yes.

Q. He was the same Botkin, you and he were supposed to have had an agreement there when you settled the strike?

A. That is right, that is the reason we could see immediately that they had made some mental reservations when they initialed this, in regard to seniority, without loss of seniority. It became apparent to us almost immediately that [306] they weren't in good faith when they initialed this paper, and the things that went along with it.

Q. Well, they certainly didn't indicate to you at that time that there was any accord between the Company and the Union in regard to your interpretation of what that document said?

A. That is right.

Q. And that was right there within a moment of the time the strike was settled?

A. Within a day.

Q. The next day? Well, that brings it up pretty

(Testimony of Otto H. Lauschel.)

close. Just one other point: I copied down what I thought were your words, to the effect that they said they would take this piece of paper to the Local Unions to vote on. Do you recall having said that?

A. Well, that was our understanding that that is what they wanted to do.

Q. I see. And this piece of paper that you were referring to is that strike settlement that is sitting there on the desk in front of you?

A. That, and everything else that went with it.

Mr. George: I guess that is all.

Trial Examiner Leff: I would like to ask him some questions: I want to get a few things clear. Who prepared the proposal, first written proposal for a settlement, was [307] it the Company or the Union?

A. We prepared the first one in longhand, as I recall it, in Mr. Billings' office on the 9th.

Trial Examiner Leff: Who wrote it out?

Mr. Elder: Who do you mean by "we"?

A. Eggers, Mr. Eggers, Mr. Botkin, Billings, and myself.

Trial Examiner Leff: Now, who did the physical writing, can you recall, now, was it the Union representative?

A. I believe Mr. Billings did it and submitted these various things to the Union, and we clipped them off and put them back together and added, and the discussion went on all through this.

(Testimony of Otto H. Lauschel.)

Trial Examiner Leff: This was when, on October 10th?

A. October 9th.

Trial Examiner Leff: October 9th? Now, when you finished with your clipping and revision and everything else, how many points did you have?

A. Well, we had most of this.

Trial Examiner Leff: Did you have about five points?

A. Oh, I imagine so, it might have been something added after, I don't recall.

Trial Examiner Leff: Well, who prepared the document that you say contained the words "and without loss of seniority," which followed the words "return to work without discrimination"?

A. I don't recall, Mr. Examiner, whether we had a typewritten copy of that made before they left the office, or whether they just took the long-hand notes along with them, but they returned the next morning with a typewritten digest of the thing, which we reworked again the next morning.

Trial Examiner Leff: Now, when they returned with this typewritten digest of this thing, was it precisely this form except that it also included the words "without loss of seniority"?

A. No, that was in the afternoon after they had revised their first typewritten draft.

Trial Examiner Leff: Then, on the afternoon of the 10th did they come back with an instrument precisely in this form, except that it also had the words "without loss of seniority"?

A. Yes.

(Testimony of Otto H. Lauschel.)

Trial Examiner Leff: That was on the afternoon of October 10th, is that right? A. Yes.

Trial Examiner Leff: It did have the words, then, as a "basis for settlement of the present dispute between the I. W. A., the Potlatch Forests, Inc., proposed," then, there were five points just like that, save for that one exception that I have indicated?

A. Except for this "without loss of seniority."

Trial Examiner Leff: That is in Paragraph No. 2, "without loss of seniority"? At that time had they submitted to you a proposal for a settlement agreement, and, then, as I understand it, you objected to the words "and without loss of seniority"?

A. That is right.

Trial Examiner Leff: Is that correct? Now, did you state the reason for your objection?

A. Yes.

Trial Examiner Leff: And exactly what did you tell them?

A. Well, their seniority would be affected in case of a curtailment.

Trial Examiner Leff: Is that what you said?

A. Yes.

Trial Examiner Leff: Did you testify on direct examination that what you said was that you wanted to protect the rights of the workers who had been taken on during the strike?

A. I said both things, those two things were the reasons that we objected to that "without loss of seniority."

(Testimony of Otto H. Lauschel.)

Trial Examiner Leff: Now, what did the Union say as to that; before you go into that, why were you interested in a curtailment of operations, weren't you interested at that time principally in protecting the job status of the men who had been taken on as replacements during the course of the strike?

A. That was an immediate problem, but over the long haul that we had been working under this kind of a settlement, we could foresee curtailment at some time in the future.

Trial Examiner Leff: Now, what was bothering you about the curtailment, precisely what did you have in mind?

A. Well, at that time on the basis of the seniority as it stood in the contract, some of the men who would come back to work before the strike was settled would have lost, been out of a job.

Trial Examiner Leff: Yes, well, you were interested, weren't you, in protecting the rights of any person who came in as a replacement, is that so?

A. Yes.

Trial Examiner Leff: You felt that if a person replaced a striker during the course of the strike, he should have security as against the person who remained out on strike? A. That is right.

Trial Examiner Leff: Now, did you have anything else in mind? A. No.

Trial Examiner Leff: Well, this is rather important, so, I want you to think about it before you answer.

(Testimony of Otto H. Lauschel.)

A. We had no thought that we wanted to penalize any striker.

Trial Examiner Leff: You didn't intend to penalize any [311] striker, all you wanted to do was to protect the job rights of the man in the job just before the strike, isn't that right? A. Yes.

Trial Examiner Leff: Because he was a replacement for a man who was out on strike is that right?

A. That is right.

Trial Examiner Leff: And, then, when you proposed the deletion of the words "and without loss of seniority" what did the Union say to you?

A. They asked if they could be excused.

Trial Examiner Leff: Yes.

A. (Continuing): And went out in the hall, as I recall it was after the office had closed, I can't be just clear on that. In any event they went out and talked it over for a few moments, and came back with those words stricken out, and we said that was all right.

Trial Examiner Leff: Coming back for a moment to the point you were discussing before, you said you didn't want to penalize people who had been out on strike, is that right?

A. That is right.

Trial Examiner Leff: I take it by that that you mean you did not want to discriminate against people just because they went out on strike?

A. That is right. [312]

Trial Examiner Leff: Now, did you want to give

(Testimony of Otto H. Lauschel.)

to people who returned prior to the end of the strike, any special treatment as against those who remained out on strike?

A. No special treatment except for the protection of the job that they had taken.

Trial Examiner Leff: In other words, you didn't want a striker to come back and bump an employee who had come back to work during the strike, and had been given a job?

A. That is right, because, ordinarily, we wouldn't give these men special treatment over a returning striker when it came to promotion and so forth, the striker still had his promotion and advancement possibilities.

Trial Examiner Leff: Yes, well, did you want to give them special treatment in case of lay-offs?

A. We wanted him to stay on the job.

Trial Examiner Leff: The job which he had taken during the strike?

A. During the strike.

Trial Examiner Leff: And, then, I think I was up to the point where I asked you what the Union said when you proposed the deletion of the words "without loss of seniority"?

A. I don't recall whether they said anything or not, or whether they just took it out in the hall.

Trial Examiner Leff: You did testify on direct that they went out in a caucus, you said, is that right? [313]

A. Yes.

Trial Examiner Leff: Then, they came back and

(Testimony of Otto H. Lauschel.)

said they just deleted the words "without loss of seniority"? A. That is right.

Trial Examiner Leff: Did they say anything else at that point? A. Not that I recall.

Trial Examiner Leff: And, then, was anything said about, oh strike that. Did you, then, prepare a document deleting those two words "and without loss of seniority" and was that in the form that we have here in General Counsel's Exhibit 5?

A. Yes.

Trial Examiner Leff: And was anything said about submitting that form to the membership?

A. As I recall it, they said that is what they were going to do.

Trial Examiner Leff: Yes, at that time it was still a proposal for a settlement, was it not?

A. Yes.

Trial Examiner Leff: Then, did they come back to you later on October 12th and tell you that they had submitted it to the membership and that the membership had approved it?

A. Said it was approved.

Trial Examiner Leff: Yes, and did you initial it, then, [314] Mr. Billings initialed it?

A. Yes.

Trial Examiner Leff: And who initialed it for the Union? A. Mr. Botkin.

Trial Examiner Leff: And at the time the initials were put on, at that time it was no longer a proposal for a contract, it was the strike settlement agreement? A. Yes.

(Testimony of Otto H. Lauschel.)

Trial Examiner Leff: And did you think at that time that this strike settlement agreement embodied your full understanding? A. It did.

Trial Examiner Leff: You may examine.

Redirect Examination

By Mr. Elder:

Q. Mr. Lauschel, do you know what the Union submitted to their membership? A. I do not.

Q. You don't know whether it was merely this paper, or whether they had discussed in your meetings this question of seniority and back to work policy? A. I have no way of knowing.

Q. At this meeting on October 12th, did the Union agree to your proposal of the back to work policy? [315]

A. We took it that they did when they took this and the verbal part of the proposal to their membership.

Q. They didn't ever tell you that they were agreeable to this question of curtailment?

A. No.

Mr. Merrick: The witness indicated "no"?

A. No.

Trial Examiner Leff: As I understood, he said "No."

Q. (By Mr. Elder): If you had an agreement as to seniority, Mr. Lauschel, between you and the Union as to this return to work policy which you say that was the reason that the clause "without

(Testimony of Otto H. Lauschel.)

loss of seniority" was stricken out, why was no mention made in the affirmative in this memorandum as to seniority? In other words, your agreement as to seniority, why was that not set forth in this memorandum?

A. They didn't want it in there.

Q. Why.

A. Because they said they couldn't sell that type of a thing to their membership, they would rather not have anything said about seniority to complicate the settlement of the strike, and get the men back to work.

Q. But had they agreed to that seniority provision?

A. Apparently, they had, when they struck it out of there, that was our assumption, now, anyhow.

Q. Yes, we have discussed and talked about Mr. D. L. [316] Billings, Mr. Billings is dead?

A. That is right.

Q. When did he die?

A. June 20th of 1948.

Mr. Elder: That is all.

Trial Examiner Leff: Any further questions?

Mr. George: No further questions.

The Witness: Could I make one more short statement?

Mr. Elder: Yes.

Trial Examiner Leff: Well, that is irregular, I have no objection, if you speak to your counsel.

Mr. Elder: Yes, go ahead, Mr. Lauschel, any-

(Testimony of Otto H. Lauschel.)

thing you want to say.

The Witness: I can see that you are leading up, that you have been leading up to this being a very informal sort of a settlement agreement, and probably a lot of conversation which took place can't be recalled, but I would like to have you understand, Mr. Examiner, that we felt that we were dealing in good faith to get this strike settled, and we thought the Union was in the same position. We felt that Mr. Eggers and Mr. Botkin came up here with the idea to get this thing closed up and get those men back to work, and in spite of the practices that have been built up over the years about signed agreements and all of the signatures on these various papers, we were as anxious as they were to get the [317] thing settled and get the men back to work; therefore, perhaps in the mistaken idea that we were all dealing in good faith, we accepted this as sufficient evidence and sufficient agreement to get the men back to work, and get the thing running in an orderly way. Now, I think that since the end of this tsrike, our conduct of the matters of the men who have, who did return after the strike and before the strike, has been good, we haven't had any difficulties to amount to anything. These two cases that have been brought up here were very minor sort of affairs, and rather a weak limb on which to hang any kind of an argument. That should have been sufficient evidence in my opinion that we have carried out the terms not only

(Testimony of Otto H. Lauschel.)

of the written agreement, but of the verbal agreement to the best of our ability. That is all.

Trial Examiner Leff: Thank you.

(Witness excused.)

Mr. Merrick: Can we take a short recess?

Mr. Elder: We rest.

* * *

ALBERT F. HARTUNG

called and sworn as a witness in rebuttal on behalf of the National Labor Relations Board, testified as follows:

Direct Examination

By Mr. Merrick:

Q. What is your full name, Mr. Hartung?

Trial Examiner Leff: Excuse me, I want rebuttal to be rebuttal, nothing else.

Q. (By Mr. Merrick): What is your full name, Mr. Hartung?

A. Albert F. Hartung (spells) H-a-r-t-u-n-g.

Q. And what is your present address and occupation?

A. My present business address is Room 418 Governor Building, Portland, Oregon, and I am First Vice-president of the International Woodworkers of America. [322]

Q. You heard the testimony of Mr. Lauschel?

A. Yes, sir.

Q. At the time of your meetings with Mr. Lauschel, Mr. Hartung, what was your position at that time?

(Testimony of Albert F. Hartung.)

A. I was CIO Regional Director for the State of Oregon.

Q. Would you tell us in your own words, just when you were called in on this situation here, and tell us what took place in your meetings with Mr. Lauschel and Mr. Billings?

A. Well, I was called on or about October 4th, I believe, and asked if I would come up here with Mr. Brown, George Brown, who was or is the Director of Organization for the IWA to see if we could arrange for a meeting with Mr. Billings. We contacted Mr. Al Roth by phone, and Mr. Roth agreed to meet us in Portland. We met in Portland in the Portland Hotel in the room, and informed him of our desire to have him arrange a meeting for us with Mr. Billings. He stated that he would attempt to make such arrangement, and I believe it was the next day, or probably the day following, he called us by phone and stated that Mr. Billings was willing to meet. We came up here and met in the Company's office with Mr. Billings and Mr. Lauschel.

Mr. Elder: Could we establish that date?

A. I think it was on or about October 7th. At the meeting we discussed the Union's request for a 7½c wage increase to [323] wipe out a differential, and after some discussion the Company stated that they would not agree to any wage increase. We proceeded from there, and discussed the possibility of a strike settlement. Nothing was put

(Testimony of Albert F. Hartung.)

down in writing by either party as to the actual language that would be used. However, I made some notes on the possible basis of settlement, and so did Mr. Brown. The question of vacation with pay for those who had been out was discussed, and the Company indicated at that meeting their willingness to agree to some language that would not deprive these people from their vacation with pay. The only point we discussed quite broadly was the replacement of those people who had gone through the picket line, and particularly the new employees who had been hired, and the Company stated that they would not fire them, and we discussed the basis of settlement, and I recall that I stated to Mr. Billings and Mr. Lauschel that those type of settlements were not uncommon, that we had had experience with them before, and I believe I mentioned the Crown-Zellerbach strike settlement at Seaside, in which men on the job were not replaced, but that they would be given jobs at comparable pay. They thought that that could be worked out on that basis. We at no time discussed what the seniority status would be after everyone was back on the job. We most of all discussed what would be the program and policy of getting them back on the job. I recall that after we had more or less discussed what I have just stated, [324] that the two company officials, Mr. Billings and Mr. Lauschel, discussed the number that would be involved. They stated, well, there wouldn't be very many,

(Testimony of Albert F. Hartung.)

probably between forty and sixty, so that the problem wouldn't be a big problem in any way, and, also, the fact that at that particular time there were a considerable number of people out, and maybe thirty or forty of them wouldn't even report back for their jobs, so there wouldn't be any question whatsoever, and the question, then, was raised by the Company as to the Union maintenance clause in the contract. They stated that they didn't feel that they can go along with it the way it was. However, they stated that probably we could work out something that would be satisfactory on that matter, and we didn't go into the details. However, the point was established that that would be one of the points that would have to be cleared up. We, then, advised Mr. Billings and Mr. Lauschel, as has already been testified here by Lauschel, that we would have to refer our conversation and ideas to the proper officials of the International Woodworkers at that time, and ask them if they would be willing to meet with them, which they indicated they would. We didn't arrange for the next meeting at that time, because I did not know whether the International officers were available right at that time, until I got back to Portland. However, I believe I called myself, and stated that the International officers were available, and asked for them to meet with me, which meeting was arranged.

Q. And that was the last contact you had with the Company prior to the strike settlement?

(Testimony of Albert F. Hartung.)

A. That is right; I have negotiated with them in the last two years, but from that time on until about a year ago I had no contact with them.

Mr. Merrick: Your witness.

Direct Examination

By Mr. George:

Q. You heard Mr. Lauschel's testimony, Mr. Hartung, you sat here and listened to Mr. Lauschel's testimony?

A. Yes, sir, I did.

Q. And was there anything that could be construed as an agreement entered into between your people and the Company as to this back to work policy of the Company?

A. No, never was mentioned in our meetings, only as to what I have testified to.

Mr. George: That is all.

Cross-Examination

By Mr. Elder:

Q. Mr. Hartung, going back to this back to work policy, I understood you to say that it did come up in the meeting, and you had referred to some settlement down in Oregon that you had on that same question, where the men went back to work but didn't replace the men who had gone back to work [326] before the settlement, but were paid the wages that they had received from the strike?

A. That is right, I mentioned that case.

(Testimony of Albert F. Hartung.)

Q. And the Company at that time advised you that they did not want the men who had gone back to work replaced, but that they were willing to pay the same salary to the men who came back that they were receiving prior to the strike?

A. They said they would not discharge them.

Q. But that they would not replace the men that were there, is that right?

A. If they held someone else's job coming back, that at that time they would not replace them.

Q. But that the Company would pay the men the same salary that they had received prior to the strike? A. That is right.

Trial Examiner Leff: When this question of replacement was discussed, was it discussed with reference to replacement at the time of termination of the strike, or at some time in the future, if this were a curtailment operation?

A. Termination of the strike.

Trial Examiner Leff: Was anything said about curtailment operations at the meeting that you attended? A. No.

Q. (By Mr. Elder): Didn't you testify a moment ago, Mr. Hartung, that Mr. Billings had pointed out that they didn't expect a curtailment very soon? [327]

A. We never discussed curtailment whatsoever.

Q. I thought that was your statement?

A. But we never got into it; there was one other thing that we discussed briefly there, and that was

(Testimony of Albert F. Hartung.)

the fact that Mr. Billings did state that if we did effect a settlement that probably the box factory would not be able to start operation immediately. That was an additional point that was discussed.

Q. Do you remember the railroad grievances?

A. Only by hearsay.

Q. You didn't attend those? A. No.

Q. You did not attend those grievance hearings?

A. No, I did not.

Q. When did you first hear, Mr. Hartung, of this return to work policy that we have had so much discussion on here?

A. The first I heard of it was on April 14th of 1949, when I was handed a copy by the Conciliator in a meeting up in the Company's office.

Q. You had had no conciliation meetings prior to that time where this matter was discussed?

A. Yes, we had.

Q. In '48, for example?

A. In '48 we had complete negotiations, at which time it [328] was never brought up. We went through the contract that is Exhibit 2; we agreed to change the recognition clause.

Q. When was that?

A. Oh, that was a meeting held somewhere around April or May of 1948, I don't recall the exact date, the Spring negotiations, and we had settled on the Coast, and I came up here, then, to negotiate contracts in the Inland Empire. The exact date I couldn't say, it might vary thirty days one way or the other. However, at that meeting

(Testimony of Albert F. Hartung.)

we took Exhibit 2, and we went through it from the front page to the back page. There was only one point that the Union had won in the negotiations, which was 12½ an hour, including a retro-active date, and we changed the recognition clause and inserted the 12½ an hour, and I believe that there was one slight change made in the wage re-opening clause, and at that time we had no knowledge of nor were we advised in any way of the company policy. I had sought strike settlement. After we got through negotiating and the negotiated points had been signed by myself, Mr. Armstrong, for the Union, Mr. Armstrong was a member of the Northwest Regional Negotiating Committee and still is, and several representatives of the Company, of which one, I believe was Mr. Reddick, Reddick it was, then advised the Company negotiating committee that this would be referred to the membership for acceptance on objections. Then, I think Mr. Beardmore brought up the fact that he thought it was time [329] that they drew up a new contract, including the interpretations that the Union and the Company had agreed to incorporate into the contract. Mr. Gordon, Mr. Frank Gordon, the representative in this area, was present at that meeting, and I asked him if there were such agreements, and he said, "Yes," and he had them in his hand there, and we briefly checked over them to see that they were agreed to, and these did not contain anything about this so-called strike policy set-

(Testimony of Albert F. Hartung.)

tlement. And, then, later on, after the document which is marked here Exhibit 8 for the Government was drawn up, and this article on, I believe Page 18, was added.

Trial Examiner Leff: May I see Page 18, please?

A. (Continuing): At the end of the section.

Q. (By Mr. Elder): The Local agents here representing the Union did not advise you at that time that this policy was in effect?

A. Yes, we didn't discuss it one way or the other, a strike settlement, the question of vacation with pay in regard to the strike settlement was referred to in our negotiations, in which the Company stated that that would be carried out in the year 1948, and we went through the rest of the contract. Neither the strike settlement nor the so-called policy was brought before that committee.

Q. After this was delivered to you, referring to General Counsel's Exhibit No 8, did you have negotiation meetings [330] on this contract which you attended?

Mr. Merrick: Mr. Examiner, before we go on with this, I would like to object. I thought it wouldn't take long. I merely called this witness as a rebuttal witness. This is going far beyond the direct examination. I merely called him as a rebuttal witness regarding the testimony of Mr. Lauschel. I did not intend to go into what activity Mr. Hartung took part in regarding the subsequent negotiations with the company.

(Testimony of Albert F. Hartung.)

Trial Examiner Leff: Well, does this line of testimony bear in any way upon his direct?

Mr. Elder: Certainly it bears upon his direct, because he has stated here that he didn't know that this policy existed, and we will prove by this, if he admits it, that he attended meetings where this contract was discussed in 1948.

Mr. Merrick: He was merely called to give his version of his conversations with Mr. Lauschel in the summer of 1947.

Trial Examiner Leff: Objection overruled.

Q. (By Mr. Elder): In 1948, Mr. Hartung, didn't you have meetings on this contract?

A. I did not.

Q. You didn't attend any of the negotiations?

A. And I never received a copy of that.

Q. That your Local representative here, Mr. Gordon, did [331] not advise you of this contract?

A. Mr. Gordon advised me by phone and read me the contract over the phone, and I advised Mr. Gordon over the phone that we had agreed to no such a thing in our negotiations, and not to sign it.

Q. Well, you knew at that time that this strike provision was in there, didn't you?

A. No, I did not, when we signed the 1948 negotiating agreement, this document was not in existence; it was agreed that Mr. Beardmore would type it up, and it was delivered some three or four weeks after I left the territory.

Q. You testified that Mr. Gordon read you this contract over the phone?

(Testimony of Albert F. Hartung.)

A. Just that one clause.

Q. At that time you were aware of it, were you not?

A. Of that clause, yes.

Mr. Elder: That is all.

Trial Examiner Leff: I show you General Counsel's Exhibit No. 10, a document called the return to work policy; have you ever seen that prior to this hearing (hands paper to witness)?

A. Yes, sir.

Trial Examiner Leff: When did you first see it?

A. This is the document that was handed me by the [332] Conciliator in a meeting in the Company's office on or about April 14th, 1949.

Trial Examiner Leff: Was that the first time you saw it?

A. That is the first time I saw it.

Trial Examiner Leff: Was the document in that form, or a substantially similar form, ever shown to you during your negotiations for a strike settlement?

A. Never. I sent this to the boys, I sent that copy to the Board when I received it.

Trial Examiner Leff: Any further questions?

Mr. Merrick: I have nothing further.

Mr. George: No further questions.

(Witness excused.)

Mr. Merrick: I would like to call Mr. Jodie Eggers as my next rebuttal witness.

JODIE EGGERS

called and sworn as a witness in rebuttal on behalf of the National Labor Relations Board, testified as follows:

Direct Examination

By Mr. Merrick:

Trial Examiner Leff: Give your name.

A. Jodie G. Eggers (spells) E-g-g-e-r-s.

Q. (By Mr. Merrick): What is your address, Mr. Eggers? A. Box 66, Malheur, Oregon.

Q. And what is your present occupation?

A. I am business agent for Local 540 of the I. W. A. [333]

Q. And how long have you held that job?

A. Since 1941.

Q. What was the job that you held during the negotiations looking toward a strike settlement here at Potlatch?

A. I was a member of the Northwest Regional Committee, and was acting in that capacity.

Q. Now, you have been present during the entire course of this hearing? A. Yes.

Q. You have heard the testimony of Mr. Lauschel and Mr. Hartung? A. Yes.

Q. Could you give us your version of your meetings with Mr. Lauschel and Mr. Billings relative to the strike settlement of 1947?

Mr. Elder: Confine that to dates.

Trial Examiner Leff: Well, will you have him fix the date of each meeting that you are testifying about?

(Testimony of Jodie Eggers.)

A. Well, on or about the 9th of November, 1947.

Trial Examiner Leff: 9th of what?

A. October, 1947, meetings were held between Mr. Billings and Mr. Lauschel and Mr. Botkin and myself in the Company's offices here in Lewiston, relative to working out a basis of a tentative agreement of settlement of the then existing strike. During the process of these negotiations, various [334] points in question were discussed by the parties. At all times it was clear or made clear by myself and Mr. Botkin that we were acting in behalf of the Northwest Regional Negotiating Committee, that any tentative agreement that we might arrive at would be submitted to the membership as a basis of agreement of the strike. Eventually, a tentative agreement was reached and reduced to writing, and I believe it's herein contained as Exhibit 5, if I recall. This tentative agreement was taken to the membership involved and voted on by them as a basis of settlement for the strike.

Trial Examiner Leff: Well, I am interested in having the witness testify as to precisely what was said in connection with the deletion of the words "and without loss of seniority."

Q. (By Mr. Merrick): Mr. Eggers, you heard Mr. Lauschel testify regarding the meeting at which he said that an agreement was taken by the Union officials from the room and certain words were stricken from that agreement; do you recall any such incident?

(Testimony of Jodie Eggers.)

A. Yes, may I see a copy of it in the files? As I recall the incident, the Company had prepared in writing the basis of settlement. Mr. Botkin and myself had taken a copy of that, and after going over it with other members of the Union and the Negotiating Committee had proposed substantially, at least, as I remember, that the words "without loss of seniority" be added. In talking to the Company representatives, [335] Mr. Lauschel and Mr. Billings, about this, they objected to that language. In the process of the discussion, they made it quite clear they did not want any employees who were then working during the time of the strike, replaced by employees then on strike who would immediately be returning to work. After a certain amount of discussion on it, Mr. Botkin and I stepped into the hall and in caucus went over the tentative agreement and, then, considering it further, we recognized, of course, that the words there would be in conflict with a part of Article 2, the No. 2 part of it, relative to the replacement of employees then on the job, by employees coming back. As to those questions of seniority, we recognized that this agreement waived from the contract only to the extent as set forth in article 2 relative to the replacement of then working employees, inasmuch as Point 5 of the tentative agreement set forth that the present then existing contract would remain in effect without change except as provided in the Union's maintenance article, which

(Testimony of Jodie Eggers.)

had no bearing relative to seniority, that in our opinion the seniority proceedings of the contract under Article 5 would, then, prevail, and there would be no need, and it would lessen any confusion relative to seniority. That was the only change from the terms of the contract relative to seniority, was set forth in very, what we thought, clear language in Point 2 of the agreement. [336]

Trial Examiner Leff: Now, you have just testified that the Company representatives said that they wanted to have that clause "without loss of seniority" deleted, because they wanted to be sure that the people who had taken jobs or who had returned to work before the termination of the strike, would not be replaced, is that correct?

A. Correct.

Trial Examiner Leff: Now, in addition, what, if anything, was said about seniority rights in the event of a curtailment of operations?

A. The problem of curtailment was not gone into in any detail, and we assumed that any other problems on seniority would be provided by the article of the contract.

Trial Examiner Leff: Well, I don't care about assumptions; what was said about seniority in case of curtailment? What was said by the Company, and what was said by you?

A. I don't recall any mention of curtailment, as far as it would affect any employees as such.

Trial Examiner Leff: Well, did the subject of curtailment come up at all?

(Testimony of Jodie Eggers.)

A. Not to my recollection.

Trial Examiner Leff: Please proceed.

Q. (By Mr. Merrick): Mr. Eggers, at any time did you or Mr. Botkin agree that men who had returned to work prior to October 13th, should be granted superseniority? [337]

A. No, indeed, the full basis of the settlement was reduced to writing in order that it could be taken to the membership as we always operated, as a basis of settlement for the strike. We never agreed to any basis of so-called seniority other than the only deviation from the seniority article, as contained in the settlement, was set forth in Article 2 of the agreement or the tentative agreement.

Mr. Merrick: You may examine. Oh, pardon me.

Mr. George: You may examine.

Cross-Examination

By Mr. Elder:

Q. Do you remember at the meeting on October 10th when Mr. Billings and Mr. Lauschel and Mr. Botkin and yourself were present, that is the meeting where you went out into the hall and struck out the "without loss of seniority" out of the contract, do you remember Mr. Billings discussing that the only time that the question of seniority would come up would be at the time of curtailment, at the present time that they could not see any curtailment?

A. No, I don't recall that.

Q. You were not present, were you, Mr. Eggers,

(Testimony of Jodie Eggers.)

at the meeting on October 12th, when this was finally concluded, that is Sunday, October 12th, 1947?

A. I was under the impression that the tentative agreement had been reached prior to that time.

Q. There had been nothing in writing and signed up, had there? [338]

A. As I recall from memory, the tentative agreement had been reached and was taken to a portion of the membership on Sunday.

Q. You agree that an agreement had been reached, but it had not been reduced to writing, had it, Mr. Eggers, and signed?

A. It had been reduced to writing, because it was that written agreement that was taken to the membership.

Q. Was it signed up by the Union and by the Company?

A. Whether or not it had been initialed before or after, I am not sure.

Q. As a matter of fact, Mr. Eggers, wasn't this memorandum that you drew up, something that you wanted to take to your Union, that you were going to tell them was your agreement, when actually you had reached an agreement on October 10th, which was oral, and that were was nothing further signed, at the time you took this to the Union?

A. No, we had never reached any agreement that was oral. The only tentative agreement, and I think there is a very definite distinction there, that the

(Testimony of Jodie Eggers.)

only agreement or tentative agreement that we had arrived at was reduced to writing, and that written word was to be taken back to the membership as a basis of settlement.

Q. But you were not present when that memorandum was initialed, were you? [339]

A. I am not sure.

Q. Did you initial any memorandum?

A. I am not sure.

Q. As a matter of fact, you know that you were not present when that memorandum was initialed, don't you? A. No, I don't know that.

Q. Well, you know that you were not present at the meeting on October 12th, 1947, which was Sunday?

A. I don't recall having been to any meeting on October 12th, if that were on a Sunday.

Q. You knew a meeting was being held between Botkin and Billings and Lauschel on October 12th, 1947?

A. I don't know that I was aware of it.

Q. You know that that meeting was agreed upon on October 10th when you adjourned the meeting of October 10th, don't you, that you would meet again on October 12th, on Sunday?

A. I don't recall any definite date having been set. All of the meetings had been held and concluded, tentative to further meetings; as far as definite meeting dates and arrangements being made, I don't recall them as to the hour and exact dates.

(Testimony of Jodie Eggers.)

Q. What Local meetings did you attend to get approval on this memorandum?

A. I attended the one here in Lewiston, and one at Pierce.

Q. What day was that? [340]

A. From memory, the meetings were on Sunday. One, as I recall, during the day here, and the evening in Pierce.

Q. What was done at those meetings as far as presenting this to the Union?

A. It was the membership, you say to the Union, you mean the membership. The tentative, or basis of agreement, was read, re-read, and point by point explained and discussed by the membership and the officers.

Q. Did you explain to the membership that when they returned after the strike they couldn't displace the men who were already on the job?

A. I explained to them under Point 2 that as a man was on the job they would not take him off the job or replace him on returning to work, as per the Article 2 of the agreement.

Q. Do you remember what time the meeting was up at Pierce on Sunday?

A. As I recall, it was in the evening some time.

Q. You couldn't have attended the meeting here in the late afternoon around five or six o'clock and still have been in Pierce for that evening meeting, could you?

A. As I recall, I left here after the meeting was

(Testimony of Jodie Eggers.)

held here during the day, and went to Pierce that evening.

Q. Do you remember, you do remember those meetings, but you don't remember whether you attended the meeting with Mr. Lauschel and Mr. Billings and Mr. Botkin, their final meeting [341] on the settlement?

A. I said I didn't recall having met with them on Sunday.

Q. How far is Pierce from Lewiston, approximately? A. I don't know.

Q. How long did it take you to get there?

A. I don't recall, it is the first time, the first and only time I was ever over the road. I went with someone else.

Q. Do you remember the meeting in December of 1947 as to the settlement, after the settlement, when you met on the railroad grievances? You remember the railroad grievances that have been discussed here in the testimony today and yesterday?

A. I recall having heard of them; I wasn't through all the discussions on them.

Q. Do you recall attending the conciliation meeting? A. Yes.

Q. Hosey was present, and Conciliator Botkin was present, Gordon, McLarick and Malrich, and Turner? A. Where was the meeting held?

Q. Do you remember that the return to work policy was discussed at that time? A. No.

Q. What was it all about?

(Testimony of Jodie Eggers.)

A. I don't know, but I attended the same meeting that you are talking about.

Q. You remember the railroad grievance meetings, don't you? [342]

A. No, I don't. I wasn't in on all the railroad grievance meetings. I was in on it right after the settlement was reached, I think the following day I recall the grievance having arisen relative to the railroad, and there were future meetings, but I wasn't in attendance on all of them.

(Thereupon, the document above mentioned was marked as Respondent's Exhibit No. 3.)

Q. (By Mr. Elder): Mr. Eggers, I hand you Respondent's Exhibit 3 for identification, and ask you if you remember the conciliation meeting which was held, at which time this was presented to the meeting, and to you, or a copy of it (hands paper to witness)?

Mr. George: What is the date on that document?

Mr. Elder: December 9th, 1947.

Q. Do you remember that having been handed in to the meeting during that conciliation here, as being the understanding, the memorandum of the strike settlement agreement?

A. No, I don't recall having received this. This?

Q. Yes?

A. No, I don't recall of having been handed that.

Q. Didn't you, at that meeting, the return to

(Testimony of Jodie Eggers.)

work policy of the Company, wasn't it discussed at that meeting?

A. I don't recall that it was, other than in line with the return to work policy or agreement that was reached by the Company. [343]

Mr. George: Mr. Examiner, I would like to object to this line of questioning as having been no proper foundation laid, there is nothing in the record that shows that this man in truth and in fact did attend this meeting.

Mr. Elder: That is what we were trying to find out, is whether or not he did.

Trial Examiner Leff: Objection overruled.

Q. (By Mr. Elder): Have you even seen this before? A. No.

Q. Ever see the copy of it before?

A. Not to my recollection.

Q. You deny that in December of 1947 that you did not know that you knew—withdraw that.

Q. You deny Mr. Eggers that in December of 1947, that you knew about the return to work policy of the Potlatch Forests, Inc.?

A. I did not know about the return to work policy as set forth in this exhibit that has been numbered 10, that has been introduced here.

Q. When did you first know about the Company's return to work policy?

A. You mean as set forth in this return to work policy?

Q. Or similar to that, yes?

(Testimony of Jodie Eggers.)

A. I never had and haven't as yet saw this memorandum that the Company had drawn up relative to their return to work policy. [344]

Q. You realize that——

A. (Interposing): The only indication that I had run into was very shortly the next day or two right after the strike, when there was a question relative to some trainmen.

Q. And what happened at that hearing?

A. Well, Mr. Botkin himself attempted to meet with Mr. Lauschel and Mr. Billings, and did meet with him relative to it. The thing came to us as the outgrowth of statements made to some of the returning employees by some of the foremen. We were informed by Mr. Billings or Mr. Lauschel that some of the statements as they had came to us could not be correct, or that that wasn't right because the Company at that date had not as yet formulated or sent out, notified all of their foremen as to what the Company's policy or position was, and, that being the case, thought that we were more or less out of order or jumping to conclusions because of a report that had come in as to what one of their foremen's conversation had been with one of the employees.

Q. Actually what they told you was the time you had come in the day after the strike settlement, that these men were not all back at work, and to hold your grievances for a few days until all the men were back at work, isn't that correct?

(Testimony of Jodie Eggers.)

A. What I just told you is correct, that they had not sent out a policy nor had meetings with their foremen as to the extent that they could know what the Company's policy was, [345] and therefore, any arguments or statements made by those foremen or employees did not necessarily state what the Company's actual policy was.

Q. What was this policy that you heard at that time?

A. It was on the question as I recall, relative to a trainman who had returned to work after the strike, having been told by a foremen or supervisor that he had no seniority, and that he would be starting in as of the time he went to work.

Q. And that was at Headquarters, Idaho, that grievance?

A. I, frankly, I am not sure where it originated.
Mr. Elder: That is all.

Redirect Examination

By Mr. Merrick:

Q. For the sake of the record, will you state where Mr. William Botkin is at the present time?

A. Where he is?

Q. Yes?

A. It is my understanding that he is in or around Naches, Michigan.

Q. What is he doing down there?

A. He is representing the International Union in

(Testimony of Jodie Eggers.)

a strike that is now in progress with the Masonite Corporation.

Q. During the course of the year, about how many Union meetings do you attend? [346]

A. Pardon?

Q. During the course of the year, about how many Union meetings do you attend?

A. You say Union meetings, you mean regular scheduled Union meetings?

Q. Or various meetings of Union members, not necessarily regularly scheduled.

A. I would say approximately a hundred during the year.

Q. How many conciliation meetings would you attend usually during the course of a year?

A. You mean as to number of days, or individual grievances?

Q. Yes, how many days did you put in in conciliation work during the course of a year?

A. Needless to say, they may vary considerably, but during the last several years, perhaps, they would average thirty or forty days.

Q. Now, going back to the strike settlement which is Exhibit 5, General Counsel's Exhibit 5, what is your recollection when the agreement was reached by the parties, on what date?

A. On or about the 12th, as I recall, it may have been.

Q. Is it your recollection that the agreement was reached in a meeting that you attended?

(Testimony of Jodie Eggers.)

A. Yes.

Q. And, then, is it your recollection that there was a [347] Union vote on that? A. Yes.

Q. As a matter of course, under your Union constitution, could that agreement be signed without approval by the membership?

A. It could not be signed as an agreement.

Q. Will you explain that?

A. Well, I say, it could not be signed as an agreement until such time as it had been ratified by the membership. The only other instances as I recollect, we may sign a joint proposal or a joint basis of settlement, which, then, is ratified by the membership, and by, perhaps, employers involved. Those instances normally arise when you are dealing with associations and a broad committee.

Q. In other words, the agreement is not binding on the membership until they approve of it, is that it? A. That is correct.

Mr. Elder: That is all.

Mr. Merrick: Anything further?

Direct Examination

By Mr. George:

Q. Jode, as I understand, you were a member of the Regional Negotiating Committee?

A. That is correct.

Q. And your particular duty in this case was to settle [348] the strike? A. That is right.

Q. If it could be settled? And as soon as the

(Testimony of Jodie Eggers.)

strike was settled, did that end your duties in connection with the operation up here, was the matter, then, referred back to the Locals to handle their grievances?

A. Yes, after the strike had been settled, and within a very short time I left the vicinity, and the thing reverted to the Local level, and the International for any further handling, after the agreement had been reached and accepted by the membership and put into effect.

Q. Now, do you know whether or not there are instances where the Committee representing the Union and Company come to a tentative agreement, initial the agreement, and, then, it is submitted to the membership, who vote on it, and in which event, if the members either reject it or turn it down, that information itself is relayed, and if it is approved, the document doesn't receive any further signature?

A. Yes, that would be the normal procedure in any negotiations as conducted by the Union or Negotiating Committee.

Q. In other words, the document wouldn't necessarily have to be initialed after the membership had voted, it could be initialed before, and, then, the Company could be notified as to whether or not the membership had approved or disapproved?

A. It could be, yes. [349]

Mr. George: I don't have any other questions.

Trial Examiner Leff: I show you General Counsel's Exhibit No. 10, and ask you whether you have ever seen that before (hands paper to witness)?

(Testimony of Jodie Eggers.)

A. No, I have never seen this before.

Trial Examiner Leff: Was that shown to you at the meeting that you attended on or about October 10th, 1947? A. No.

Q. (By Mr. Elder): Do I understand from your testimony that if the officers of the Union sign an agreement, and the Company signs an agreement, it isn't a valid contract?

A. I said that the only instances where they may sign something prior to the membership voting on it, would be that they would sign a tentative or a proposed settlement of some negotiations, in which it would be understood that we depended upon the acceptance of the membership, and in most instances, the employers as well.

Q. Is that understanding a part of the agreement or is it verbal?

A. It's understood normally within the writing of the tentative agreement itself, and in some instances it has been agreed to, and generally initialed by a conciliator who may be sent in.

Q. In other words, this General Counsel's Exhibit No. 5 was not valid until it was approved by the membership? A. No. [350]

Q. What agreement did you make with the Company on that?

A. We made that agreement as a basis of settlement for the strike, if accepted by the membership.

Q. And that was a verbal agreement?

A. Pardon?

(Testimony of Jodie Eggers.)

Q. That was a verbal agreement between the officers of the Company and you?

A. It was understood that that was being arrived at as a tentative agreement which would be taken to the membership.

Q. There was no written provision in this contract that that was subject to approval by the Union, was there, the Union membership?

A. I don't read anything into it to that extent.

Trial Examiner Leff: The contract that was just referred to by Counsel for Respondent, is General Counsel's Exhibit No. 5.

Mr. Elder: That is all.

Q. You deny that you attended a conciliation meeting on the 9th of December, 1947, at which Mr. Hosey and Mr. Botkin and Mr. Gordon and Mr. Malrich and Mr. Turner were there, at which time General Counsel's Exhibit 3 for identification was presented to you and read by you and Mr. Botkin and Mr. Ezy, and Mr. Gordon and Mr. Malrich and Mr. Turner?

A. I did not deny that I was to such a meeting, I said [351] that I did not recall being to such a meeting, that I did not receive the copy as you indicated.

Q. Could you have received this copy? You deny that you ever received a copy of General Counsel's Exhibit No. 3, or Respondent's Exhibit No. 3?

A. I don't recall having ever seen it.

(Testimony of Jodie Eggers.)

Q. Did Mr. Botkin receive a copy of that at that meeting? A. I do not know.

Q. Well, you would know if this was presented to Mr. Botkin, wouldn't you?

A. I do not recall having been at the meeting.
Mr. Elder: That is all.

Trial Examiner Leff: Any further questions?
The witness is excused.

(Witness excused.)

Trial Examiner Leff: The next witness.

Mr. Merrick: I would like to recall Mr. Frank Gordon for about two questions.

FRANK GORDON

recalled as a witness on behalf of the National Labor Relations Board, in rebuttal, testified further as follows:

Direct Examination

By Mr. Merrick:

Q. You are the same Frank Gordon that testified earlier in this proceeding? [352]

A. Yes.

Q. Did you hear the testimony of Mr. Cummerford today? A. Yes.

Q. Just speak up a little bit, Frank. Do you recall meeting with Mr. Cummerford regarding a grievance of Claude Walters? A. Yes, I do.

Q. Can you recall what you said to Mr. Cummerford relative to such grievance?

(Testimony of Frank Gordon.)

A. Not entirely, it was an informal meeting such as we hold many times in regard to, I think, matters of that nature, and the meeting was principally to go over the records and try to determine who there was in various departments who had less seniority than Mr. Walters did, and as to the statement made by Mr. Cummerford this morning, I do not call the exact words. I certainly, we did not agree in the words as it was stated there, and the matter was referred to in this respect, that if the thing which was presented to us was true, that there wasn't much we could do about it, and it was very definitely understood there that we did not agree with the Company's policy on seniority, and that in looking through these records we come across several who had their seniority through strike reasons, and we come across some others that we had been told of some other jobs held by younger men, but was informed that those jobs were out of the question as far as Mr. Walters was [353] concerned, because they were too heavy jobs to handle by him. Now, we reserved, certainly, any definite statement on the matter until we had a chance to see Mr. Walters.

Q. Well, at any time did you agree that Mr. Claude Walters would turn down some particular job that he should have taken?

A. No, we reserved the right to see Mr. Walters, because, after all, we wanted his support on it.

Mr. Merrick: That is all I have of this witness.

(Testimony of Frank Gordon.)

Cross-Examination

By Mr. Elder:

Q. You heard Mr. Walters' testimony this morning, where he did state that he had turned these jobs down? A. That is right.

Q. Why didn't you file a grievance?

A. We had already filed the grievances, test grievances, on similar cases, and we were in preparation of our board case and decided to enter this in the board case without taking it through formal grievance procedure.

Q. Did you take in the conciliation meeting in December, 1947, of the railroad grievances?

A. Yes.

Q. Was Mr. Eggers present at that meeting?

A. I don't believe he was. As I remember it, there was only Mr. Botkin appeared for the Union.

Q. You remember, Mr. Gordon, this memorandum which is [354] General Counsel's Exhibit 3, having been presented at that meeting, or a copy of it (hands paper to witness)?

A. Yes, I remember something about that, but I don't know for sure that that is a copy of what was presented, because I never got one.

Q. Was the copy of it substantially in that form?

A. I recognize some of the stuff that is in that. I couldn't say that I ever got a copy; I never had a copy of that.

Q. Didn't the Union get a copy of it?

(Testimony of Frank Gordon.)

A. They may have, but I didn't get any.

Q. But you remember it being discussed at the meeting?

A. I remember parts of that. I couldn't recall all of it. I just glanced through it; there is parts I couldn't say I remember for sure at all.

Q. Well, this could be the memorandum that was presented there, couldn't it?

A. Possibly, I don't have one myself, I know that.

Mr. Elder: We will offer Respondent's Exhibit 3.

Mr. Merrick: I will object. I don't believe it has been sufficiently identified.

Trial Examiner Leff: Objection sustained.

Mr. George: Is this being offered in evidence?

Mr. Elder: It has been rejected.

(Thereupon, the document above referred to was rejected.) [335]

RESPONDENT'S EXHIBIT No. 3

Memorandum of Meetings in Lewiston for Settlement of Strike by I.W.A. Against Potlatch Forests, Inc.

Meeting October 9th in Company offices

Present for I.W.A.—Botkin and Eggers

Present for P.F.I.—Billings and Lauschel

Billings and Lauschel covered practically the same points with these men that were discussed

(Testimony of Frank Gordon.)

with Brown and Hartung laying stress on the fact that there would be no concession in the matter of a reduction in the present differential and that the men who had returned to work during the strike would be protected in the jobs they were holding when the strike was settled.

We also discussed the maintenance of membership clause in the contract and explained views as to the necessity of a revision which would protect anyone who had returned to work and who had been a member of the union from being forced to maintain membership or the company being asked to release such an employee or any other who had returned to work.

The following morning (Oct. 10th) Botkin and Eggers returned with a memorandum prepared for discussion. We jointly reworded and added to this memo to cover some of the points discussed the previous day.

Late that afternoon they asked for a further discussion and brought in a memorandum, substantially as it was, finally agreed to by both parties except that paragraph # 2 started out as follows: "All former employees of Potlatch Forests, Inc., will return to work without discrimination or loss of seniority . . . etc."

Mr. Billings told them that their memo was satisfactory except that we would not agree to the term "without loss of seniority." He then again stated our position in regard to protecting the men in the jobs they then held. If a striker returned to work

(Testimony of Frank Gordon.)

and found his job not open he would be given other work and paid at the rate of his regular job, but we would protect his seniority to his regular job or a similar one when it was open, but in no instance would he displace a man who had gone to work during the strike.

Mr. Billings also pointed out that the present vacation clause would require revision as all men who had been on strike for two months would not be qualified under the present interpretations. For that purpose a former employee's seniority would also be protected.

Mr. Billings told them that with these two things in mind he would like to have them re-write the seniority provision to meet our views.

Mr. Botkin and Mr. Eggers retired to discuss the matter and returned within a few minutes with the words "without loss of seniority" crossed out. Mr. Billings asked why they had passed up any mention of seniority and it was their opinion that they were going to have difficulty in selling the settlement to their membership and it would be best not to further complicate settlement by any reference to seniority.

Mr. Billings expressed the opinion that it probably was a matter which would not arise or affect anyone seriously until a major curtailment took place and at this time such a curtailment was not in prospect.

The agreement in its final form was initialed

(Testimony of Frank Gordon.)

by Mr. Botkin and Lauschel on Sunday evening, October 12th, in the presence of Mr. Billings.

/s/ OHL

Rejected July 12, 1949.

Q. (By Mr. Elder): Mr. Gordon, at this meeting which you say you attended in December, 1947, on the railroad grievances, wasn't that the meeting where this entire question of the return to work policy in the case of curtailment was discussed between the Union and the Company?

A. The entire return to work policy as it is presented here, as an exhibit, was never mentioned. The company maintained that these people had seniority, we maintained they didn't; there was no such thing as any policy that had been laid out, and they based their claim at that time on the interpretation of the strike settlement, I remember that very distinctly.

Q. And what was that interpretation, Mr. Gordon?

A. They interpreted that strike settlement to say that a man who stayed out on strike didn't have seniority.

Q. In other words, that he, in the case of curtailment, he could not replace an employee that was on the job prior to the strike settlement, is that correct?

A. Yes.

Q. What is your answer? A. That is right.

Q. So that in December of 1947, Mr. Gordon,

(Testimony of Frank Gordon.)

you had knowledge of the position of the Company as far as the strike settlement was concerned, didn't you?

A. Yes, we did, to a certain extent. [356]

Mr. Merrick: I will object to this line of questioning, it is clearly going beyond the scope of the direct. He was clearly called as a rebuttal witness.

Trial Examiner Leff: Objection overruled.

Mr. Elder: That is all.

(Witness excused.)

Trial Examiner Leff: I would like to recall Mr. Lauschel to the stand for a just a moment.

OTTO LAUSCHEL

recalled as a witness on behalf of the National Labor Relations Board, testified as follows:

Examination

Trial Examiner Leff: You may sit there if you want. I show you General Counsel's Exhibit 10, and ask you if you can recall the circumstances under which that was first prepared (hands paper to witness)? A. Yes.

Trial Examiner Leff: Would you state what they were, please?

A. At the time, as soon as we became familiar with what kind of terms the Union was going to try to settle on, we thought we had better get it down in writing, so that our interpretation, as we interpreted the strike settlement, together with the

(Testimony of Otto Lauschel.)

verbal conversation that went with it would be uniformly administered throughout our organizations. [357]

Trial Examiner Leff: Well, when was this document, General Counsel's Exhibit 10, drafted, was it before or after the strike settlement agreement, General Counsel's Exhibit No. 5 was initialed by the parties (hands papers to witness)?

A. It was prepared in anticipation that this was going to be accepted.

Trial Examination Leff: Now, Exhibit 10 was prepared in the form of an agreement to be signed by the Union and by the Company, was it not?

A. I believe so.

Trial Examiner Leff: Now, did you ever, in fact, submit General Counsel's Exhibit 10 to the Union? A. No.

Trial Examiner Leff: Can you explain why you did not submit it? A. No, I can't.

Trial Examiner Leff: Did you ever show it to any representative of the Union during the course of the strike settlement agreement?

A. No, in fact after the strike settlement I just practically moved out of the picture as far as the details of the operation were concerned, I mean, the operation of the strike settlement.

Trial Examiner Leff: Well, that document, Exhibit No. 10, sets forth your return to work policy as you now apply it, is that correct?

A. That is right.

Trial Examiner Leff: Did you not think it im-

(Testimony of Otto Lauschel.)

portant enough to submit it to the Union for its consideration, if you felt it was a part of the strike settlement agreement?

A. I just can't recall what eventually happened with this particular document.

Trial Examiner Leff: It was prepared in a form which anticipated it might be signed by both the Union and the Company and become a form of agreement?

Mr. Beardmore: And the Conciliation service.

Trial Examiner Leff: Also the Conciliation service, is that correct? A. Yes.

Trial Examiner Leff: And yet you never did submit it to the Union? A. That is right.

Trial Examiner Leff: Was that because you felt that the particular provisions of that document had never been discussed or agreed to?

A. Not at all. We discussed it at one of these meetings that we had later on this railroad matter they called.

Trial Examiner Leff: You discussed it at that time, did you ever discuss it previously to that time?

A. Not except during the negotiations for the settlement [359] of the strike, the terms of that.

Trial Examiner Leff: What was the—when you were discussing the strike settlement, were you really discussing the replacement of employees hired during the strike by strikers, or were you discussing curtailment of operations? A. Both.

Trial Examiner Leff: Why was there a need at that time to discuss curtailment of operations?

(Testimony of Otto Lauschel.)

A. Because we were facing it sooner or later.

Trial Examiner Leff: But that had nothing to do with the strike, did it?

A. That had nothing to do with the strike except that we were protecting these men, not only just to get these men back to work, but for the duration of their employment with us.

Trial Examiner Leff: When you brought up this question during the negotiations, did the Union say anything about superseniority?

A. No, I never heard that word until after it was all over with.

Trial Examiner Leff: Did they make any objection at all? A. Oh, yes.

Trial Examiner Leff: What was their objection?

A. Well, they thought the men should return without loss of seniority to the exact position where they were in the [360] seniority list prior to the strike. That was unsatisfactory to us, except where it might affect the future employment of one of the men who had come back before the strike was ended.

Trial Examiner Leff: Did you want to give the men who had come back before the strike was ended, seniority over all strikers that did not return until after the strike was ended?

A. On the job on which they were holding at that time.

Trial Examiner Leff: Only the job which they were holding at that time? Did you intend, now,

(Testimony of Otto Lauschel.)

suppose you had a situation of this kind: Suppose you had two jobs in a department, one job was filled by A, we will call him A, who had returned from during the strike; the other job was filled by B, who returned after the strike. Now, B did not replace A, nor did A replace B, there were two separate vacancies. Now, did you intend at that time that A was to have seniority over B in any subsequent lay-off, even though A had been working with the Company for a shorter time than B?

A. Yes.

Trial Examiner Leff: Did you tell that to the Union in those words? A. Yes.

Trial Examiner Leff: During the strike negotiations? A. Yes. [361]

Trial Examiner Leff: What did the Union say?

A. Apparently they agreed, because they struck out that "without loss of seniority."

Trial Examiner Leff: Well, did they say they agreed to that, in so many words?

A. What else could you infer?

Trial Examiner Leff: Well, then, it was only an assumption on your part that they had agreed; did they ever say at any point during the course of the negotiations that they would not agree to that, or that they did not want to agree to that?

A. Not that I recall. Oh, they said it several times during the course, but eventually when they struck out those words, why, it was our assumption that they agreed.

(Testimony of Otto Lauschel.)

Trial Examiner Leff: Did you ask them whether that was their intention?

A. Well, we did again, we did mention it again.

Trial Examiner Leff: Well, let me ask you this question: Was it your intention to discriminate in favor of the employees who returned during the strike, as against those who remained out after October 12th?

A. On the job they were holding, yes.

Trial Examiner Leff: I don't quite understand what you mean by the addition of the words "the job they were holding"; would you mind explaining it? [362]

A. They couldn't be bumped out of that job either by an incoming man or by curtailment.

Trial Examiner Leff: Suppose a man returned during the course of the strike to a certain job, and, then, he was transferred from that job to some other job, would that superseniority apply even, then, in the case of a lay-off?

A. I am not just sure of that point, Mr. Examiner.

Trial Examiner Leff: Any further questions?

Mr. Merrick: I just have one question. Mr. Lauschel, do you remember when this document was prepared? A. No.

Q. You don't? You don't recall if it was prepared in this exact form? A. No.

Q. Did you see it after it had been prepared?

A. No, I never have.

Mr. Merrick: That is all.

(Testimony of Otto Lauschel.)

Mr. Elder: May I ask a few questions in an attempt to correct something?

Trial Examiner Leff: Yes.

Q. (By Mr. Elder): I call your attention, Mr. Lauschel, to Respondent's Exhibit No. 2, which has an attachment which is the return to work policy (hands paper to witness)? A. Yes.

Q. Now, when was that prepared, that return to work policy? [363]

A. Right after the men came back to work, I think, probably the next day, because I know that Mr. Billings had in myself and all of the key men in the management group, together with Mr. Beardmore and Mr. Troy, and explained just exactly what our interpretations of the settlement were, both the written settlement and the understood clauses as to vacations and promotions, and after that we asked them to prepare this thing as a policy under that interpretation.

Q. Now, you will note that this Exhibit No. 10, the body of it, is the same as your return to work policy, which is Exhibit No. 2, with the signatures added to it. When you testified that this was drawn right after the strike, were you referring to the body of it here, or actually to this instrument where the signatures had been added?

A. I didn't know anything about the instrument with the signatures at all; this is the only one I knew anything about.

Q. Could this have been drawn in connection with the negotiations that went on in 1949 regarding

(Testimony of Otto Lauschel.)

the extension of the contract?

A. It could have been.

Q. You have no knowledge of why these signatures were added on the bottom? A. No.

* * *

Mr. Elder: I would like to ask Mr. Hartung in connection with the questions asked Mr. Lauschel, Mr. Examiner, and he is changing the date that Exhibit No. 10 was given to him.

Q. Do you know, Mr. Hartung, why these signatures were added to this Exhibit No. 10, which is entitled Potlatch Forests, Inc., Return to Work Policy? In other words, wasn't it in connection with your negotiating on the renewal of the contract, the new contract?

A. That was presented to me at the last meeting we had with the Company where Conciliator C. C. Mann was present.

Q. And what was the purpose of that meeting, Mr. Hartung?

A. The purpose of that meeting was we were negotiating on the 1949 contract, and the Company had made a counter-proposal in which, a new proposal, in which they had changed from their original position, changing the language as a change in General Counsel's Exhibit No. 8. They had made a counter-proposal to this language "the strike settlement of October 12th, 1947, [371] shall control the application of the seniority article." Their counter-proposal at that time, I don't recall the exact wording, but rather than make reference to

(Testimony of Otto Lauschel.)

the strike settlement, it mentioned the Company strike policy. At that time I asked what they were talking about, and Mr. Seaman, the Conciliator, he also was curious and, then, the Company representative supplied Mr. Seaman with this document known as the Board's Exhibit.

Mr. Elder: I think this is immaterial to the issue, but all I wanted to get out of the witness if he will admit it, is that this was presented to you in connection with your negotiations of the 1949 contract? A. That is right.

Q. And that is why those six lines on the bottom, they were never signed, but that is why they are on there?

A. I don't know that. I didn't know that was a copy they prepared right at that time, or whether it was one that had been prepared some time ago, I didn't ask one way or the other.

Q. But it was in connection with the 1949 contract? A. That is what I got. [372]

* * *

Mr. Elder: We would like to renew our motion which we presented at the beginning and at the end of the Government's case, to dismiss.

Trial Examiner Leff: The motion is on the ground that there isn't sufficient evidence to support the allegations of the complaint.

Mr. Elder: And further that they have not complied with the National Labor Relations Board's

act, as amended, and specifically Section 9, sub-section G and sub-section H, and for the further reason that the complaint is barred by the statute of limitations under Section 10-B of the National Labor Relations act, as amended, and that it does not set forth facts sufficient to constitute an act, and that they have not presented sufficient evidence.

Trial Examiner Leff: The decision is reserved on the motion insofar as it seeks dismissal of the complaint for insufficiency of proof, for the reasons indicated at the beginning of the hearing. The motion insofar as it seeks to dismiss the complaint on the ground that Section 9, F, G and H, had not been complied with, and on the further ground that the [373] allegations of the complaint are barred by the statute of limitations, is denied. Any further motion? [374]

Received July 26, 1949.

[Endorsed]: No. 12532. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Potlatch Forests, Inc., Respondent. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed May 1, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

No. 12532

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

POTLATCH FORESTS, INC.,
Respondent.

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

In this proceeding petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. The Board's findings of fact are supported by substantial evidence on the record considered as a whole.
2. The Board's conclusions of law are in accord with the applicable statutes and judicial decision.
3. The Board's order is in all respect valid and proper.
4. A decree should be entered enforcing the Board's order in full.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Washington, D. C.
April 25th, 1950.

[Endorsed]: Filed May 1, 1950.

act, as amended, and specifically Section 9, sub-section G and sub-section H, and for the further reason that the complaint is barred by the statute of limitations under Section 10-B of the National Labor Relations act, as amended, and that it does not set forth facts sufficient to constitute an act, and that they have not presented sufficient evidence.

Trial Examiner Leff: The decision is reserved on the motion insofar as it seeks dismissal of the complaint for insufficiency of proof, for the reasons indicated at the beginning of the hearing. The motion insofar as it seeks to dismiss the complaint on the ground that Section 9, F, G and H, had not been complied with, and on the further ground that the [373] allegations of the complaint are barred by the statute of limitations, is denied. Any further motion? [374]

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Filed May 1, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
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4. A decree should be entered enforcing the Board's order in full.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Washington, D. C.
April 25th, 1950.

[Endorsed]: Filed May 1, 1950.

[Title of Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. II, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Potlatch Forests, Inc., and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Potlatch Forests, Inc., and International Woodworkers of America, Local 10-364, C.I.O., Case No. 19-CA-166."

In support of this petition the Board respectfully shows:

(1) Respondent is a Maine corporation engaged in business in the State of Idaho, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with

this Court herein, to which reference is hereby made, the Board on December 21, 1949, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Potlatch Forests, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining or giving effect to any seniority or lay-off policy which discriminates against any of its employees with regard to the order in which they are to be selected for lay-off, or with regard to any other aspect of their employment relationship, on the basis of whether they had or had not engaged in strike or concerted activities, or on the basis of the period during which they had engaged in such strike or concerted activities;

(b) Discouraging membership in International Woodworkers of America, Local 10-364, C.I.O., and its parent organization, International Woodworkers of America, C.I.O., or any other labor organization of its employees, by in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post immediately at its Clearwater plant at Lewiston, Idaho, copies of the notice attached hereto, marked Appendix A.¹ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondent, be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Nineteenth Region in writing, within ten (10) days from the receipt of this Intermediate Report what steps the Respondent has taken to comply therewith.

(3) On December 21, 1949, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

¹In the event that this Order is enforced by a decree of a Circuit Court of Appeals, there shall be inserted before the words, "A Decision and Order" the words, "Decree of the United States Court of Appeals Enforcing."

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondent, and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR
RELATIONS BOARD,

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C., this day of

Appendix A

Notice to All Employees

Pursuant to a Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not maintain or give effect to any seniority or lay-off policy which discriminates against any of our employees with regard to the order in which they are to be selected for lay-off, or with regard to any other aspect of their employment relationship, on the basis of whether they had or had not engaged in strike activities, or on the basis of the period during which they had engaged in any such activities.

We will not discourage membership in International Woodworkers of America, Local 10-364, C.I.O., and International Woodworkers of America, C.I.O., or in any other labor organization of our employees, by in any other manner discriminating against any of our employees in regard to their hire or tenure of employment, or any term or condition of their employment.

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to tenure of employment or any term or condition of employment against any

employee because of membership in or activity on behalf of any such labor organization.

POTLATCH FORESTS, INC.,

.....

(Employer)

By.....

(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed May 1, 1950.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America

To International Woodworkers of America, Attn:

Mr. Albert Hartung, 418 Governor Bldg., Portland, Oregon

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 1st day of

May, 1950, a petition of the National Labor Relations Board for enforcement of its order entered on December 21, 1949, in a proceeding known upon the records of the said Board as "In the Matter of Potlatch Forests, Inc., and International Woodworkers of America, Local 10-364-C.I.O., Case No. 19-CA-166," and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 1st day of May in the year of our Lord one thousand, nine hundred and fifty.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Return on Service of Writ

United States of America,
District of Oregon—ss.

I hereby certify and return that I served the annexed Order to Show Cause on the therein-named

International Woodworkers of America by serving Albert Hartung by handing to and leaving a true and correct copy thereof with Albert Hartung personally at Portland, Oregon, in said District on the 8th day of May, 1950.

JACK R. CAUFIELD,

U. S. Marshal,

By /s/ NORMAN W. COCHRAN,
Deputy.

Docket No. 13841 Cause No. 12532

[Endorsed]: Filed May 11, 1950.

CA No. 12532

United States of America—ss.

The President of the United States of America

To Potlatch Forests, Inc., Attn: Mr. George W. Beardmore, Lewiston, Idaho, and International Woodworkers of America, Local 10-364-CIO, 418 Weisberger Bldg., Lewiston, Idaho,

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 1st day of May, 1950, a petition of the National Labor Relations Board for enforcement of its order entered on De-

ember 21, 1949, in a proceeding known upon the records of the said Board as

“In the Matter of Potlatch Forests, Inc., and International Woodworkers of America, Local 10-364, C.I.O., Case No. 19-CA-166,”

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 1st day of May in the year of our Lord one thousand, nine hundred and fifty.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Return on Service of Writ

United States of America,
District of Idaho—ss.

I hereby certify and return that I served the annexed Order to Show Cause and Copy of Petition for Enforcement of an Order on the therein-named

Potlatch Forests, Inc., by handing to and leaving a true and correct copy thereof with H. L. Torsen, secretary and treasurer and statutory agent for the Potlatch Forests in Idaho personally at Lewiston, Idaho, in said District on the 15th day of May, A.D. 1950.

EVERETT M. EVANS,
U. S. Marshal.

By /s/ J. BRUCE BLAKE,
Deputy.

Marshal's Expense \$14.64.

Return on Service of Writ

United States of America,
District of Idaho—ss.

I hereby certify and return that I served the annexed Order to Show Cause and Copy of Petition for Enforcement of an Order on the therein-named International Woodworkers of America, Local 10-364-CIO, by handing to and leaving a true and correct copy thereof with William Angove, president of Local 10-34-CIO, personally, at Lewiston, Idaho, in said District on the 15th day of May, A.D. 1950.

EVERETT M. EVANS,
U. S. Marshal.

By /s/ J. BRUCE BLAKE,
Deputy.

[Endorsed]: Filed May 22, 1950.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCE-
MENT OF AN ORDER OF THE NA-
TIONAL LABOR RELATIONS BOARD

Now comes the Potlatch Forests, Inc., a Maine corporation authorized to do buisness in the State of Idaho and through its attorneys, R. N. Elder and George W. Beardmore, and for answer to a petition heretofore filed in said cause for enforcement of an order of the National Labor Relations Board says:

I.

It admits that it is a Maine corporation engaged in business in the State of Idaho within the Ninth Judicial Circuit, but denies that any unfair labor practice occurred as alleged in said petition or as alleged by the National Labor Relations Board or that it is or has ever engaged in any unfair labor practice within the meaning of the National Labor Relations Act, as amended.

II.

Further answering said petition, it denies that there has ever been any original jurisdiction of said cause in said National Labor Relations Board for the following reasons:

1. That said Complaint did not conform to the National Labor Relations Act, as amended, or the rules and regulations issued by the Board in that the Complaint failed to set forth facts sufficient to state an unfair labor practice within the mean-

ing of Section 8 (a), Subsection (1) and (3) of said Act.

2. That the bargaining agent has not fully complied and is not in full compliance with the National Labor Relations Act as amended and particularly Section 9 (f), (g), and (h). That the International Union and each of its agents and local Unions, namely Locals 10-119, 10-358, 10-361, and 10-364, having members among the employees in the bargaining unit are disqualified from using the processes of the National Labor Relations Board by reason of said non-compliance.

3. That the proceedings as set forth in said Complaint are barred by the statute of limitations being Section 10 (b) of said National Labor Relations Act, as amended.

III.

Respondent further says in answer to said petition that no violation or violations of the National Labor Relations Act, as amended, have ever occurred on the part of said Respondent, Potlatch Forests, Inc., and its agents, officers, servants or employees and that the proofs and testimony taken before the trial examiner, as set forth in the record, fail to indicate any such violations, but rather and instead show a distinct compliance with the provisions of said Act and the provisions of the order of the National Labor Relations Board based upon any such alleged violations are entirely without basis in fact.

IV.

Respondent further says in answer to said peti-

tion that the International Union and the four local Unions constitute the bargaining agent and the bargaining agent and each of its component units is disqualified from using the processes of the National Labor Relations Board due to the fact that there has not been full compliance with the National Labor Relations Act, as amended, and particularly Section 9 (f), (g) and (h).

V.

Respondent further says in answer to said petition that the policy and practices from which the company has been ordered to cease and desist were established by agreement with the union officials who settled an existing labor dispute and maintained and followed said policy and practices with the knowledge and acquiescence of the bargaining agent for a period of over six months prior to the filing of the charges by the bargaining agent. That the proceedings are barred by the statute of limitations and said complaint should have been dismissed by reason of Section 10 (b) of the National Labor Relations Act, as amended.

VI.

Respondent further says in answer to said petition that the Company in following a policy and seniority practices set up in accordance with the provisions of a strike settlement agreement negotiated by the bargaining agent, which policy protects the seniority of strikers for all purposes except in the event of curtailment is not an unfair labor practice

within the meaning of Section 8 (a), Subsection (1) and (3) of the National Labor Relations Act, as amended, or either of them.

VII.

Respondent further says in answer to said petition that it believes that in all instances its management and supervisors and employees fully complied with the National Labor Relations, as amended, and committed no violation thereof.

VIII.

Respondent further says in answer to said petition that the Findings of Fact of the National Labor Relations Board are not supported by substantial evidence or at all. That the conclusions of law entered by the Board are not in accord with the Statutes and judicial decisions.

Wherefore, the said Potlatch Forests, Inc., Respondent herein, prays this Honorable Court that said order of said National Labor Relations Board be set aside in its entirety as provided in Section 10 (e) in said National Labor Relations Act, as amended, upon the grounds and for the reasons hereinabove set forth and that the petition of the National Labor Relations Board be dismissed.

/s/ R. N. ELDER,

/s/ ROBT. H. ELDER,

/s/ SIDNEY E. SMITH,

/s/ GEORGE W. BEARDMORE,

Attorneys for Respondent.

State of Idaho,
County of Kootenai—ss.

R. N. Elder and George W. Beardmore, being first duly sworn, state that they are counsel for the Potlatch Forests, Inc., Respondent herein, and that they are authorized to and do make this verified answer on behalf of the said Potlatch Forests, Inc. That they have caused to be prepared and have read the foregoing Answer and have knowledge of the contents thereof and the statements made therein are true to the best of their knowledge, information and belief.

/s/ R. N. ELDER,

/s/ GEORGE W. BEARDMORE.

Subscribed and sworn to before me this 23 day of May, 1950.

[Seal] /s/ SIDNEY E. SMITH,
Notary Public for the State of Idaho. Residing at
Coeur d'Alene.

My commission expires 12/2/50.

State of Idaho,
County of Kootenai—ss.

R. N. Elder, being first duly sworn, deposes and says that he has served the annexed Answer to Petition for Enforcement of the National Labor Relations Board, designation of record, and appearance upon the National Labor Relations Board by placing a true and compared copy of the same in a

duly stamped envelope, addressed to the National Labor Relations Board in care of A. Norman Somers, Assistant General Counsel in Washington, D. C., this 23 day of May, 1950.

/s/ R. N. ELDER.

Subscribed and sworn to before me this 23 day, of May, 1950.

/s/ SIDNEY E. SMITH,
Notary Public for the State of Idaho, Residing at
Coeur d'Alene.

[Endorsed]: Filed May 25, 1950.